

EXHIBIT B

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,)
 Plaintiff,)
)
VS.) NO. CV-2005-0219-PR
)
ABBOTT LABORATORIES,)
INC., et al,)
 Defendants.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ROBERT J. SWANSTON,) NO. CV 2022-004988
individually and on behalf)
of himself and all others)
similarly situated,)
 Plaintiff,) (Assigned to the
) Honorable Janet
VS.) Barton)
)
TAP PHARMACEUTICAL PRODUCTS,)
INC.; et al.,)
 Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF

HARVEY J. WEINTRAUB

September 22, 2006

Volume 5

<p style="text-align: right;">Page 812</p> <p>1 UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA</p> <p>2 THE STATE OF ARIZONA) Cause No. 2:06-cv-00045-ROS 3 ex rel. TERRY GODDARD,) Plaintiff,)</p> <p>4) VS.) 5) 6 ABBOTT LABORATORIES;) et al.,) Defendants.)</p> <p>7 ***** 8 9 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS 10 FIFTH DIVISION</p> <p>11 STATE OF ARKANSAS,) 12) VS.) CASE NO. CIV 2004-634 13) 14 WARRICK PHARMACEUTICALS) CORPORATION; SCHERING-PLOUGH) CORPORATION; and SCHERING) 15 CORPORATION.) 16 *****</p> <p>17 DOCKET NO. X07-CV-03-0083296S (CLD) 18 STATE OF CONNECTICUT) SUPERIOR COURT 19) COMPLEX LITIGATION DOCKET 20) AT TOLLAND VS.) 21) 22 DEY INC., ET AL) 23) 24 ***** 25</p>	<p style="text-align: right;">Page 814</p> <p>1 COMMONWEALTH OF KENTUCKY FRANKLIN CIRCUIT COURT 2 DIVISION TWO</p> <p>3 CIVIL ACTION NO. 03-CI-1135</p> <p>4 COMMONWEALTH OF KENTUCKY) 5 ex rel. GREGORY D. STUMBO,) ATTORNEY GENERAL,) 6 Plaintiff,) VS.) 7) 8 WARRICK PHARMACEUTICALS) CORP., et al.,) Defendants.)</p> <p>9 ***** 10 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS</p> <p>11 THE COMMONWEALTH OF) 12 MASSACHUSETTS,) 13 Plaintiff,) VS.) Case No. 03-CV-11865-PBX 14) 15 MYLAN LABORATORIES,) INC., et al.,) 16 Defendants.) 17 ***** 18 UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>19 IN RE PHARMACEUTICAL) MDL No. 1456 20 INDUSTRY AVERAGE) Civil Action No. 01-12257-PBS 21 WHOLESALE PRICE) Judge Patti B. Saris 22 LITIGATION) Magistrate Judge 23) Marianne B. Bowler 24) 25</p>
<p style="text-align: right;">Page 813</p> <p>1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA</p> <p>2 THE STATE OF FLORIDA) 3 Ex rel.) 4 VEN-A-CARE OF THE) CIVIL ACTION NO. FLORIDA KEYS, INC.,) 98-3032A 5 et al.,) Plaintiffs,) 6) VS.) 7) 8 BOEHRINGER INGELHEIM) CORPORATION; DEY, INC.; DEY,) L.P.; et al.,) 9 Defendants.) 10 *****</p> <p>11 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII</p> <p>12 STATE OF HAWAII,) CIVIL NO. 06-00437 13 Plaintiff,) DAE/BMK 14) VS.) 15) 16 ABBOTT LABORATORIES INC.;) ALPHARMA USPD, INC.; et al.,) Defendants.)</p> <p>17 ***** 18 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION</p> <p>19 THE PEOPLE OF THE STATE OF) 20 ILLINOIS,) 21 Plaintiff,) 22) VS.) Case No. 05 CH 02474 23) 24 ABBOTT LABORATORIES, et al.,) Defendants.) 25</p>	<p style="text-align: right;">Page 815</p> <p>1 IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI</p> <p>2 STATE OF MISSISSIPPI,) 3 Plaintiff,) 4) VS.) CIVIL ACTION NO: G2005-2021 5) 6 ABBOTT LABORATORIES,) INC., et al.,) Defendant.)</p> <p>7 ***** 8 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS STATE OF MISSOURI</p> <p>9 STATE OF MISSOURI, ex rel.) 10 JEREMIAH W. (JAY) NIXON,) 11 Attorney General,) 12) 13 AND) 14) Case No: 054-1216 15 MISSOURI DEPARTMENT OF) SOCIAL SERVICES, DIVISION OF) 16 MEDICAL SERVICES,) Division No. 31 Plaintiff,) 17) VS.) 18) 19 DEY, INC., DEY, L.P., MERCK) 20 KGaA, et al.,) 21 Defendant.) 22 ***** 23 24 25</p>

2 (Pages 812 to 815)

FREDERICKS-CARROLL REPORTING

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1 SUPERIOR COURT OF NEW JERSEY
2 UNION COUNTY
3 LAW DIVISION
4 DOCKET NO.: UNN-L-2329-04

5 CLIFFSIDE NURSING HOME, INC.,)
6 on behalf of itself and all)
7 other similarly situated, as)
8 defined herein,)
9 Plaintiffs,)
10) Civil Action
11 VS.)
12)
13 DEY, INC., WARRICK)
14 PHARMACEUTICALS CORPORATION,)
15 et al.,)
16 Defendants.)
17 *****

18 SUPERIOR COURT OF NEW JERSEY
19 MONMOUTH COUNTY
20 LAW DIVISION
21 DOCKET NO.: MON-L-3136-06

22 INTERNATIONAL UNION OF)
23 OPERATING ENGINEERS,)
24 LOCAL 68 WELFARE FUND,) Civil Action
25 Plaintiffs,)
VS.)
ASTRAZENECA, PLC, et al.,)
Defendant.)

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THE COUNTY OF ERIE,)
Plaintiff,)
VS.) Index No. 12005-2439
ABBOTT LABORATORIES,)
INC. ET AL.,)
Defendants.)

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1 STATE OF NEW YORK
2 SUPREME COURT COUNTY OF OSWEGO

3 THE COUNTY OF OSWEGO,)
4 Plaintiff,)
5 -against-) Index No. 06-0697
6)
7 ABBOTT LABORATORIES,)
8 INC., AGOURON)
9 PHARMACEUTICALS, INC.,)
10 ET AL.,)
11 Defendants.)
12 *****

13 STATE OF NEW YORK
14 SUPREME COURT COUNTY OF SCHENECTADY

15 THE COUNTY OF OSWEGO,)
16 Plaintiff,)
17 -against-) Index No. 2006-886
18)
19 ABBOTT LABORATORIES,)
20 INC., AGOURON)
21 PHARMACEUTICALS, INC.,)
22 ET AL.,)
23 Defendants.)
24 *****

25 COUNTY OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,) Case No. A0402047
Plaintiff,)
Judge Myers
-vs-)
DEY, INC., et al.,)
Defendant.)

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1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 COMMONWEALTH OF PENNSYLVANIA)
3 by Thomas W. Corbett, Jr.,)
4 in his capacity as Attorney)
5 General of the Commonwealth)
6 of Pennsylvania,) No. 212 MD 2004
7 Plaintiff,)
8 VS.)
9)
10 TAP PHARMACEUTICAL PRODUCTS,)
11 INC., et al.,)
12 Defendant.)
13 *****

14 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
15 COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL CIRCUIT
16 STATE OF SOUTH CAROLINA,)
17 and HENRY D. McMASTER,)
18 In His Official Capacity as)
19 Attorney General for the) Civil Action No.
20 State of South Carolina,) 06-CP-40-4390
21 Plaintiff,)
22 VS.)
23)
24 WARRICK PHARMACEUTICALS)
25 CORPORATION, SCHERING-PLOUGH)
CORPORATION, and SCHERING)
CORPORATION,)
Defendants.)

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL CIRCUIT
3 STATE OF SOUTH CAROLINA,)
4 and HENRY D. McMASTER,)
5 In His Official Capacity as)
6 Attorney General for the) Civil Action No.
7 State of South Carolina,) 06-CP-40-4399
8 Plaintiff,)
9 VS.)
10)
11 WARRICK PHARMACEUTICALS)
12 CORPORATION, SCHERING-PLOUGH)
13 CORPORATION, and SCHERING)
14 CORPORATION,)
15 Defendants.)
16 *****

17 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
18 BRANCH 7

19 STATE OF WISCONSIN,)
20 Plaintiff,)
21 VS.) Case NO. 04-CV-1709
22)
23 AMGEN, INC., et al.,)
24 Defendants.)
25 *****

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1 On the 22nd day of September, 2006,
 2 between the hours of 9:03 a.m. and 1:19 p.m., at the
 3 Hamilton Park Hotel and Conference Center, Ashton
 4 Springfield Conference Room, 175 Park Avenue, Florham
 5 Park, New Jersey, before me, CYNTHIA VOHLKEN, a
 6 Certified Shorthand Reporter for the State of Texas,
 7 appeared HARVEY J. WEINTRAUB, who, being by me first
 8 duly sworn, gave an oral deposition at the instance of
 9 the Defendants Schering Corporation, Schering-Plough
 10 Corporation and Warrick Pharmaceuticals Corporation in
 11 said cause, pursuant to the Rules of Civil Procedure
 12 and Federal Rules of Civil Procedure.

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1 APPEARANCES (CONTINUED)
 2 FOR THE PLAINTIFFS STATE OF CONNECTICUT and the MDL
 3 CLASS PLAINTIFFS in MASSACHUSETTS:
 4 MR. HUGH E. McNEELY
 5 Hagens Berman Sobol Shapiro LLP
 6 One Main Street, Fourth Floor
 7 Cambridge, Massachusetts 02142
 8 (617) 482-3700
 9 FOR THE PLAINTIFF THE STATE OF FLORIDA:
 10 MS. SHACHI MANKODI
 11 Assistant Attorney General
 12 Office of the Attorney General
 13 Medicaid Fraud Control Unit
 14 PL-01, The Capitol
 15 Tallahassee, Florida 32311
 16 (850) 414-3600
 17 FOR THE PLAINTIFF VEN-A-CARE OF THE FLORIDA KEYS:
 18 MR. JARRETT ANDERSON
 19 Attorney at Law
 20 2411 Hartford Road
 21 Austin, Texas 78703
 22 FOR THE PLAINTIFFS WISCONSIN, ILLINOIS, KENTUCKY,
 23 HAWAII, MISSISSIPPI, CITY OF NEW YORK AND COUNTIES OF
 24 NEW YORK REPRESENTED BY KIRBY MCINERNEY & SQUIRE:
 25 MR. MICHAEL WINGET-HERNANDEZ
 Winget-Hernandez, LLC
 3112 Windsor Road, No. 228
 Austin, Texas 78703
 (512) 474-4095
 FOR THE PLAINTIFF THE COMMONWEALTH OF MASSACHUSETTS:
 MR. RICHARD C. HEIDLAGE
 MS. COLLEEN A. MCCARTHY
 Assistant Attorneys General
 The Commonwealth of Massachusetts
 Office of the Attorney General
 Medicaid Fraud Control Unit
 One Ashburton Place, Room 1813
 Boston, Massachusetts 02108-1598
 (617) 727-2200

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1 APPEARANCES
 2 FOR THE PLAINTIFF THE STATE OF ALABAMA:
 3 MR. ROGER L. BATES
 4 Hand Arendall L.L.C.
 5 1200 Park Place Tower
 6 2001 Park Place North
 7 Birmingham, Alabama 35203
 8 (205) 324-4400
 9 FOR THE PLAINTIFFS ALABAMA, MISSOURI, SOUTH CAROLINA
 10 and HAWAII:
 11 MR. CLINT CARTER
 12 Beasley, Allen, Crow, Methvin, Portis
 13 & Miles, P.C.
 14 272 Commerce Street
 15 Montgomery, Alabama 36103-4160
 16 (334) 269-2343
 17 FOR THE PLAINTIFF THE STATE OF ARKANSAS:
 18 MR. BRADFORD J. PHELPS
 19 Assistant Attorney General
 20 Office of Attorney General Mike Beebe
 21 Antitrust Division
 22 323 Center Street, Suite 1100
 23 Little Rock, Arkansas 72201
 24 (501) 682-3625
 25 FOR THE PLAINTIFF THE STATE OF CALIFORNIA:
 MR. NICHOLAS PAUL
 Supervising Deputy Attorney General
 MR. TIMOTHY C. FOOTE
 Deputy Attorney General
 Civil Prosecutions Unit
 BMFEA
 110 West A Street, Suite 1100
 San Diego, California 92186
 (619) 688-6099

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1 APPEARANCES (CONTINUED)
 2 FOR THE PLAINTIFF THE STATE OF MISSOURI:
 3 MS. JAN ADAMS
 4 Assistant Attorney General
 5 Missouri Attorney General's Office
 6 Medicaid Fraud Control Unit
 7 720 Olive Street, Suite 2150
 8 St. Louis, Missouri 63101
 9 (314) 340-4764
 10 FOR THE PLAINTIFFS THE CITY OF NEW YORK and VARIOUS
 11 NEW YORK COUNTIES:
 12 MR. JAMES P. CARROLL, JR.
 13 Kirby McInerney & Squire
 14 830 3rd Avenue, 10th Floor
 15 New York, New York 10022
 16 (212) 371-6600
 17 FOR THE PLAINTIFFS ERIE COUNTY, SCHENECTADY COUNTY AND
 18 OSWEGO COUNTY:
 19 MR. DANIEL C. BURKE
 20 Weitz & Luxenberg, P.C.
 21 180 Maiden Lane
 22 New York, New York 10038
 23 (212) 558-5811
 24 FOR THE PLAINTIFF THE STATE OF OHIO:
 25 MR. ROBERT HEUCK, II,
 Waite, Schneider, Bayless & Chesley
 1513 Fourth & Vine Tower
 One West Fourth Street
 Cincinnati, Ohio 45202
 FOR THE PLAINTIFF THE COMMONWEALTH OF PENNSYLVANIA:
 MR. JOSEPH L. RODA
 RodaNast, P.C.
 801 Estelle Drive
 Lancaster, Pennsylvania 17601
 (717) 892-3000

4 (Pages 820 to 823)

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1 APPEARANCES (CONTINUED)
2 FOR THE PLAINTIFF SOUTH CAROLINA ATTORNEY GENERAL:
3 MR. WILLIAM E. HOPKINS, JR.
4 (Not Present)
5 McCutchen Blanton Johnson & Barnette, LLP
6 1414 Lady Street
7 Columbia, South Carolina 29201
8 (803) 799-9791
9
10 FOR THE PLAINTIFF SOUTH CAROLINA:
11 MR. W. JONATHAN HARLING
12 Mike Kelly Law Group, LLC
13 500 Taylor Street
14 Columbia, South Carolina 29202
15 (803) 726-0123
16
17 FOR THE DEFENDANTS SCHERING CORPORATION,
18 SCHERING-PLOUGH CORPORATION and WARRICK
19 PHARMACEUTICALS CORPORATION:
20
21 MR. C. MICHAEL MOORE
22 Locke Liddell & Sapp, LLP
23 2200 Ross Avenue, Suite 2200
24 Dallas, Texas 75201-6776
25 (214) 740-8000

26 -and-
27
28 MS. HEATHER S. CRALL
29 Ropes & Gray LLP
30 One International Place
31 Boston, Massachusetts 02110-2624
32 (617) 951-7000
33
34 -and-
35
36 MR. JAMES G. LONG, III
37 (By Telephonic Means)
38 Nexsen Pruet, LLC
39 1441 Main Street
40 Columbia, South Carolina 29201
41 (803) 771-8900
42
43
44
45

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1 INDEX
2 Appearances..... 821
3 HARVEY J. WEINTRAUB
4 Examination (Cont.) By Mr. Winget-Hernandez. 831
5 Examination by Mr. McNeely..... 871
6
7 Signature and Changes..... 978
8 Reporter's Certificate..... 980
9
10 VIDEOTAPE NUMBER
11
12 13 829
13 14 871
14 15 902
15 16 946
16
17 EXHIBITS
18
19 NO. DESCRIPTION PAGE
20
21 (Previous Exhibits)
22
23 7 889
24 16 871
25 69 841
26 71 844
27
28 (New Exhibits)
29
30 83 831
31 August 12, 1999 Letter from Richard Zahn
32 to Honorable Thomas Bliley, Re: Letter
33 dated July 19, 1999 Requesting Information
34 Concerning the Pricing for Albuterol
35 Sulfate .083%, with attachment
36 (RGS 0315084-315141) Highly Confidential
37 84 853
38 August 1, 1997 Memo from Linda Zhou to
39 Distribution, Subject: Managed Care/ITG
40 Reporting Package, with attachment
41 (RGX 0154625-154648) Highly Confidential
42 85 854
43 Integration of Warrick Into Managed Care
44 (SP 0013796-13797) Confidential
45

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1 APPEARANCES (CONTINUED)
2
3 FOR THE DEFENDANT DEY, INC.:
4
5 MR. PHILIP D. ROBBEN
6 Kelley Drye & Warren LLP
7 101 Park Avenue
8 New York, New York 10178
9 (212) 808-7800
10
11 FOR THE DEFENDANT PAR PHARMACEUTICAL INC. AND PAR
12 PHARMACEUTICAL COMPANIES, INC.:
13
14 MR. PAUL K. DUEFFERT
15 (By Telephonic Means)
16 Williams & Connolly LLP
17 725 12th Street, N.W.
18 Washington, DC 2005
19 (202) 434-5097
20
21 ALSO PRESENT:
22
23 Dr. John Lockwood, Ven-A-Care
24 Ms. Peggy Forrest, The Breen Law Firm
25 Mr. Brian Bobbitt, Videographer
26 Ms. Angie Smith, Court Reporter
27 Mr. Ricky Acker, Videographer
28
29 *-*_*_*_*_*
30
31
32
33
34
35

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1 NO. DESCRIPTION PAGE
2 86 861
3 October 12, 1993 Letter from Harvey
4 Weintraub to Martha McNeil asking to
5 change the AWP on the albuterol sulfate
6 solution 0.083%; advertisement for
7 Albuterol Sulfate; October 12, 1993 Letter
8 from Harvey Weintraub to Don Rodriguez,
9 asking to change the AWP on the albuterol
10 sulfate solution 0.083% (WP000000065A-67A)
11 Confidential
12 87 871
13 Warrick Pharmaceuticals Policy and
14 Procedure Manual (SPW 0032456-32622)
15 Highly Confidential
16 88 874
17 Schering International (SW0638402-638595)
18 Highly Confidential
19 89 880
20 Corporate Data Sheet, Schering Corporation
21 June 24, 1991; Warrick Pharmaceuticals
22 Corporation May 29, 1998 (SP 0012427-12430)
23 Confidential
24 90 883
25 State of Delaware 1993 Annual Franchise
26 Tax Report
27 91 886
28 State of Delaware - Annual Franchise Tax
29 Report, Tax Year 2004
30 92 891
31 Medicaid Reimbursement for Drugs by State
32 from Redbook 1998, Redbook 1999, Redbook
33 2000
34 93 895
35 Web pages from National Pharmaceutical
36 Council, About NPC
37 94 897
38 Extracts from the Pharmaceutical Benefits
39 Under State Medical Assistance Programs
40 2000 Published by the National
41 Pharmaceutical Council, Inc.
42 95 898
43 2000-08-14 E-mail from Dan Valerio to
44 Harvey Weintraub, Subject: Redbook
45 Omissions Letter with attachments
46 Catalogue-Redbook Prices.xls, Redbook
47 Additions.doc (SPF0084328-84333)
48 Highly Confidential

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1 96 901
 2 Schering Laboratories Generic Strategy
 3 (WAR0005993-6097) Highly Confidential
 4 (WPX0006057-6161) Confidential
 5 97 910
 6 August 9, 1993 Memo from Harvey Weintraub
 7 to Mr. Zahn, Subject: Status Report -
 8 Warrick Pharmaceuticals (WCT0031786-31790)
 9 Highly Confidential (SP 0012800-12806)
 10 Confidential
 11 98 913
 12 February 2, 1995 Letter to Fallon Clinic
 13 Pharmacy, offering products for contract;
 14 E-mail thread, October 28, 1999 E-mail
 15 from Patty Burke to Kathleen Flynn,
 16 Subject: RE: Fallon Clinic - albuterol
 17 (WAR0043141-43148, 43124) Highly
 18 Confidential (SP 0001454-1461, 1436)
 19 Confidential Attorneys' Eyes Only
 20 99 916
 21 October 15, 1992 Memo from Carolyn Kocis
 22 to Distribution, Subject: Nominal Pricing
 23 Meeting, Reference: Executive Summary and
 24 Minutes October 15, 1992 Meeting
 25 (SP 000939-949) Confidential
 (TX-D&W 78023-78033)
 100 932
 January 4, 1993 Memo from E.P. Desimone,
 R.W. Zahn to Raul E. Cesan, Subject:
 Strategic Issues (SPW0039672-39674)
 Highly Confidential (WPX0006048-6050)
 Confidential
 101 935
 January 3, 1996 Memo from Mark Calabrese,
 etc., to Managed Care Director's and MCAMs,
 Subject: PROVENTIL, Inhaler/Albuterol
 Generic Managed Care Action Plan
 (WAR0001434-1441) Highly Confidential
 (WPX0001432-1439) Confidential
 102 948
 December 11, 1997 Memo from Linda Zhou to
 R. Cesan and R. Zahn, Subject: PacifiCare
 Proposal (RGX 0198854-198855) Highly
 Confidential
 103 952
 Schering/Warrick Albuterol Inhaler Action
 Plan, Prepared by: Steve Cooper, Mark
 Calabrese (WAR0001510-1527) Highly
 Confidential (WPX0001508-1525) Confidential

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1 (Exhibit 83 marked)
 2 THE VIDEOGRAPHER: Stand by. We are on
 3 the record September 22nd, 2006. The time is 9:03
 4 a.m. This is the beginning of Tape 13.
 5 Will counsel identify themselves for the
 6 record, please.
 7 MR. MOORE: Mike Moore, for Schering and
 8 Warrick.
 9 MS. CRALL: Heather Crall with Ropes &
 10 Gray for Schering and Warrick.
 11 MR. HEUCK: Bob Heuck for the State of
 12 Ohio.
 13 MR. WINGET-HERNANDEZ: Michael
 14 Winget-Hernandez for the City of New York, the New
 15 York counties represented by KMS, Wisconsin, Illinois,
 16 Kentucky, Mississippi and Hawai'i.
 17 MS. ADAMS: Jan Adams for the State of
 18 Missouri.
 19 MR. HEIDLAGE: Richard Heidlage and
 20 Colleen McCarthy for the Commonwealth of
 21 Massachusetts.
 22 MR. ROBBEN: Philip Robben, Kelley, Drye
 23 & Warren representing Dey.
 24 MR. CARROLL: James Carroll, Kirby
 25 McInerney & Squire, representing the City of New York

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1 and various New York counties.
 2 MR. PHELPS: Brad Phelps from the
 3 Arkansas Attorney General's Office representing the
 4 State of Arkansas.
 5 MR. BURKE: Daniel Burke from Weitz &
 6 Luxenberg representing Erie County, Schenectady County
 7 and Oswego County.
 8 MR. ANDERSON: Jarrett Anderson, counsel
 9 for Ven-A-Care.
 10 DR. LOCKWOOD: John Lockwood. I'm an
 11 employee of Ven-A-Care. I'm not an attorney.
 12 MR. PAUL: Nick Paul and Tim Foote for
 13 California with the California AG.
 14 MR. BATES: Roger Bates, Hand Arendall,
 15 the State of Alabama.
 16 MR. CARTER: Clint Carter, Beasley
 17 Allen, the State of Alabama.
 18 MR. HARLING: Jonathan Harling for the
 19 State of South Carolina.
 20 MR. McNEELY: Hugh McNeely, State of
 21 Connecticut, the MDL class plaintiffs.
 22 MR. MOORE: On the phone, please.
 23 MR. RODA: Joseph Roda, Commonwealth of
 24 Pennsylvania.
 25 MS. MANKODI: Shachi Mankodi for the

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1 Florida Attorney General's Office.
 2 MR. LONG: James Long from Warrick and
 3 Schering in South Carolina, Nexsen Pruet law firm.
 4 MR. MOORE: Okay.
 5 HARVEY WEINTRAUB,
 6 having been previously duly sworn, testified further
 7 as follows:
 8 EXAMINATION (CONTINUED)
 9 BY MR. WINGET-HERNANDEZ:
 10 Q. Mr. Weintraub, did you bring the Warrick
 11 price file with you this morning?
 12 A. No.
 13 Q. You can still get an electronic copy of the
 14 Warrick price file from Schering Finance in a few
 15 minutes, couldn't you?
 16 MR. MOORE: Object to --
 17 A. I couldn't --
 18 MR. MOORE: Excuse me, Mr. Weintraub.
 19 Give me a chance to make my objections today.
 20 Object to the form of the question.
 21 A. I cannot. I doubt it because I do not work
 22 for Warrick Pharmaceuticals.
 23 (Discussion off the record)
 24 Q. (BY MR. WINGET-HERNANDEZ) I would like to
 25 hand you, Mr. Weintraub, what's been marked as Exhibit

6 (Pages 828 to 831)

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1 Q. Of the first product that you were involved
2 in.
3 MR. MOORE: I object to the form of the
4 question.
5 A. I -- will you rephrase that, please?
6 Q. (BY MR. WINGET-HERNANDEZ) You knew upon
7 launch of the first -- well, let's talk specifically
8 about the inhaler. You were involved in the launch of
9 inhaler, right?
10 A. Yes.
11 Q. And you knew when the inhaler launched that
12 you were going to rely on generic industry practice
13 and not lower the AWP after the launch; isn't that
14 correct?
15 MR. MOORE: Objection, form, repetitive,
16 asked and answered.
17 A. I didn't know that. It was my -- by that
18 time I knew that it was not the industry practice. I
19 didn't know whether the price was going to go -- which
20 way it was going to go, obviously down, but I had no
21 specific intent to lower it as it went down.
22 Q. (BY MR. WINGET-HERNANDEZ) In any case --
23 A. Nor did I have any intent to raise it if it
24 went up, if all the competitors went up. I was going
25 to leave it in place. I think I've testified to that

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1 point.
2 Q. Isn't it true, Mr. Weintraub, that your
3 rejection of the brand industry practice of lowering
4 the AWP proportionately as market prices declined was
5 based, as you've testified, on something that you
6 heard sometime from someone that you don't remember?
7 MR. MOORE: Object to the form of the
8 question. It's repetitive, asked and answered and
9 argumentative.
10 A. Not from someone sometime. By then it became
11 widespread information to me that one didn't lower it.
12 It wasn't one person one time. I picked it up just as
13 a matter of experience over the months.
14 Q. (BY MR. WINGET-HERNANDEZ) But you don't
15 remember who -- from who; isn't that right?
16 A. No.
17 MR. MOORE: Objection, repetitive, asked
18 and answered.
19 MR. WINGET-HERNANDEZ: Reserving
20 objections and -- and other rights to be stated later,
21 I'm going to pass the witness under protest to Hagens
22 Berman.
23 MR. McNEELY: If we could go off the
24 record for -- allow me to take a position at the table
25 and move my exhibits.

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1 MR. MOORE: Before we go off the record,
2 just -- I'm curious to know, just on your statement,
3 what does it mean "under protest to Hagens Berman"?
4 MR. WINGET-HERNANDEZ: I don't -- I'm
5 not finished with this witness. That's what it means.
6 I have more work to do and I don't have time, but
7 I'm -- I'm ceding the witness.
8 MR. MOORE: Okay. Well, it's our
9 position, just -- I thought that's what you meant, or
10 I wasn't quite sure, but it's our position that you're
11 passing the witness. You're -- you're done.
12 MR. WINGET-HERNANDEZ: Well, I'm not
13 done, but --
14 MR. MOORE: Well, I know you're --
15 MR. WINGET-HERNANDEZ: -- but I'm ceding
16 the witness.
17 MR. MOORE: That's your position
18 since --
19 MR. WINGET-HERNANDEZ: I don't want to
20 argue about it. I'm going to talk about it later.
21 MR. MOORE: I'm not arguing about it.
22 You stated your position. I'm stating my position.
23 MR. WINGET-HERNANDEZ: Very well.
24 MR. MOORE: Thank you.
25 Let's take a break.

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1 THE VIDEOGRAPHER: Stand by. The time
2 is 9:54 a.m. We're off the record. This concludes
3 Tape 13.
4 (Recess from 9:54 to 10:06)
5 THE VIDEOGRAPHER: Stand by. The time
6 is 10:06 a.m. We are back on the record. This is the
7 beginning of Tape 14.
8 EXAMINATION
9 BY MR. McNEELY:
10 Q. Good morning, Mr. Weintraub.
11 A. Good morning.
12 Q. My name is Hugh McNeely. I'm with the law
13 firm of Hagens Berman Sobol Shapiro. I'm out of the
14 Cambridge office and I'll be asking questions on
15 behalf of certain of the AWP-MDL class plaintiffs that
16 is going on in Massachusetts, as well as on behalf of
17 the State of Connecticut.
18 And what I would like to do is address
19 some of the things that perhaps have already been
20 discussed just briefly. There was a question about
21 Exhibit -- Exhibit 16 being a complete document of the
22 Warrick Pharmaceuticals policy and procedures. And
23 I'm going to have marked as Exhibit 87 a Warrick
24 Pharmaceuticals Policy and Procedure Manual that was
25 produced as a result of a 30(b)(6) deposition in this

16 (Pages 868 to 871)

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1 matter.
 2 (Exhibit 87 marked)
 3 MR. MOORE: We are getting some paper
 4 rustling noises. If someone who's doing that could
 5 just put on the mute button, it would help.
 6 Q. (BY MR. McNEELY) If you would, take a look
 7 and review that. It's your -- and see if that -- if
 8 you can tell me that is something you recognize?
 9 A. (Witness reviewing document). Yes, it's a
 10 Warrick policy and procedure manual. That's what the
 11 title page says and the rest of the documents look
 12 like they belong to it.
 13 Q. This particular manual, which is Exhibit 87,
 14 has certain dates as far as effective dates. I would
 15 ask if you could just go through and -- and review
 16 some of the effective dates and if that is something
 17 that you recall seeing in the manual that you are
 18 familiar with when you were with Warrick.
 19 A. The effective dates?
 20 Q. Yes.
 21 A. Periodically sections were changed and
 22 inserted. So there would be an effective date and
 23 then a new document or replacement document for a
 24 section would be issued and it would have a date on
 25 it.

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1 Q. Okay.
 2 A. So that the manual was constantly being
 3 updated.
 4 Q. And so you might have sections that have an
 5 effective date of -- for one year and then you might
 6 also have -- it replaces another section with a --
 7 with a date following that; is that correct?
 8 A. That is correct.
 9 Q. On the very first page, which is labeled the
 10 "Index" to the Warrick Pharmaceuticals Policy and
 11 Procedure Manual, do you -- do you see towards the
 12 bottom of that index there are also sections labeled
 13 "Schering Plough Finance Manual" and "Schering Plough
 14 Corporate Policy and Procedure," do you see that?
 15 A. Yes.
 16 Q. And is it your recollection that the Warrick
 17 Pharmaceutical policy had Schering-Plough procedures
 18 in -- within the Warrick manual?
 19 A. It had certain Schering-Plough procedures in
 20 the manual. They were usually procedures that were
 21 not subject to a change by the individual subsidiary.
 22 For example, equal employment opportunity and sexual
 23 harassment, which is on the bottom, applied to
 24 everybody. So that would be in the manual. And so
 25 that would be part of our manual, that portion of the

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1 Schering-Plough procedures manual.
 2 Q. And when you say that it applies to everyone,
 3 does that mean that applies to all units of
 4 Schering-Plough?
 5 A. That is correct. I'm sorry, I was not
 6 precise.
 7 MR. McNEELY: Also in the prior
 8 questioning there have been -- or at least there were
 9 several organizational charts that were put into
 10 evidence, but I would like to submit another
 11 organizational chart and -- and employ directly of
 12 what purports to be Schering-Plough International's
 13 organizational charts and -- or Schering-Plough
 14 Corporation's and have that marked as Exhibit 88.
 15 Q. (BY MR. McNEELY) And if you would, please,
 16 take the time to review that.
 17 (Exhibit 88 marked)
 18 MR. MOORE: It's an unfair tactic to
 19 give me all these big ol' documents before I've got to
 20 go catch a plane this afternoon.
 21 MR. McNEELY: Well --
 22 MR. WINGET-HERNANDEZ: I was just
 23 thinking the same thing.
 24 MR. McNEELY: I figured you would know
 25 how to handle it.

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1 MR. MOORE: Is there a trash can around
 2 here?
 3 MR. McNEELY: I'll take it back.
 4 MR. MOORE: Okay.
 5 A. (Witness reviewing document). It's a
 6 Schering Corporation organization chart that
 7 apparently was issued in approximately April of 2000.
 8 Q. (BY MR. McNEELY) And with regard to this
 9 Schering-Plough organizational chart, I would like to
 10 refer you to -- first of all to Chart 12.90.
 11 MR. MOORE: Do you have a Bates for
 12 that?
 13 MR. McNEELY: Yes. It's -- the Bates
 14 number is -- the last three are 539.
 15 MR. MOORE: Okay.
 16 Q. (BY MR. McNEELY) Do you have that before
 17 you, Mr. Weintraub?
 18 A. Yes.
 19 Q. Can you identify what that Chart 12.90
 20 represents?
 21 A. It's a chart for the subsidiary or unit
 22 called Worldwide Generics.
 23 Q. And is that not, in fact, an organizational
 24 chart for the unit known as Warrick Pharmaceuticals?
 25 A. It incorporates Warrick and Kenilworth

17 (Pages 872 to 875)

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1 Pharmaceuticals.
 2 Q. Would you identify those -- that part of the
 3 chart which is the -- the Kenilworth?
 4 A. The three blocks toward the left that say
 5 "Degen," "Hart" and "Erpa."
 6 Q. And would you identify those -- those
 7 organizational blocks that represent Warrick?
 8 A. "Graf," "Gough," "Sherman," "D'Ambrosio" and
 9 "Open."
 10 Q. Is this consistent with your understanding
 11 that both Kenilworth and Warrick were under Worldwide
 12 Generics headed by Raman Kapur as the president?
 13 A. Yes.
 14 Q. I would like to next refer you to -- it's
 15 Chart 12.00, which is -- the Bates label, the last
 16 three is 501.
 17 A. Yes.
 18 Q. And what does that Chart 12.00 represent?
 19 A. That's a chart that represents the
 20 organization for Schering Laboratories.
 21 Q. And who is represented as the president of
 22 Schering lab?
 23 A. Rich Zahn.
 24 Q. And is -- is the Warrick unit represented on
 25 this chart?

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1 A. Yes, it is.
 2 Q. And -- and how is it represented?
 3 A. In the bottom left block where it says
 4 "President Generics" and "Kapur."
 5 Q. And was Raman Kapur, did his -- did he, in
 6 fact, answer to Richard Zahn, the president of
 7 Schering Laboratories?
 8 A. Yes, he did.
 9 Q. And I also note in this particular chart
 10 there is a block for -- it has a vice-president of
 11 Schering sales. Do you see that? It's -- I guess
 12 it's the first row to your -- to the extreme right.
 13 A. Yes.
 14 Q. Now, I believe during your -- in your resume
 15 and your former -- your earlier testimony is that you
 16 were vice-president of sales at one point in Schering
 17 Laboratories; is that correct?
 18 A. That is correct.
 19 Q. And this particular -- the VP at this time,
 20 for this chart is -- it looks like Foil?
 21 A. Frank Foil.
 22 Q. Frank Foil. Would this be the same position
 23 that you held earlier?
 24 MR. MOORE: Objection, form, no
 25 foundation.

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1 A. It was the same position in terms of title.
 2 Since I don't know, without looking at Chart 12.40,
 3 what reported to it, I couldn't say it was identically
 4 the same position, but for the most part it would be
 5 the same position.
 6 Q. (BY MR. McNEELY) Well, let's take a look at
 7 Chart 12.400 (sic), if you would. It's -- the last
 8 three Bates is 525. Do you see that?
 9 A. Yes. I did not have a -- I didn't have the
 10 title of sales and development, as Frank Foil had. I
 11 had a title vice-president of sales. I did not have
 12 an intermediary between me and the regional directors.
 13 Q. So your position would have been more in
 14 keeping with the -- at least it looks like the
 15 position of the vice-president of Schering sales held
 16 by Segarra?
 17 MR. MOORE: Objection, form. No
 18 foundation.
 19 A. In terms of the sales -- field force sales,
 20 in terms of the other portions reporting in, I'm not
 21 quite sure. Because these were obviously not the only
 22 things -- I think, were not the only things reporting
 23 in to Frank Foil. I'm not sure.
 24 Q. (BY MR. McNEELY) When you were a
 25 vice-president of sales, was the -- the unit that you

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1 worked in also known as Schering Sales Corporation?
 2 MR. MOORE: Objection, form.
 3 A. It was not -- I don't know how it was set up
 4 for compensation or for other purposes. It was called
 5 Schering Sales, Schering Corporation or Schering
 6 Laboratories. It had -- depending upon where we were,
 7 we had all three names going.
 8 Q. (BY MR. McNEELY) I'm having trouble to
 9 understand. Did you say that it was known as Schering
 10 Sales Corporation --
 11 A. Well, we --
 12 Q. -- the particular unit that you were a VP in?
 13 A. I was a VP for Schering Laboratories.
 14 Schering Sales Corporation was an entity set up by
 15 finance department, I believe. I'm not quite sure
 16 exactly what -- what it encompassed.
 17 Q. Do you know who was the -- the -- was there a
 18 president or vice-president who was in charge of
 19 Schering Sales Corporation that you can recall?
 20 A. I'm not familiar with that.
 21 Q. Did you ever work with anyone from Schering
 22 Sales Corporation?
 23 A. Not under the title of Schering Sales
 24 Corporation. People I worked with were from Schering
 25 Laboratories or other sections of Schering.

18 (Pages 876 to 879)

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<p style="text-align: right;">Page 880</p> <p>1 Q. Mr. Weintraub, there's been some testimony 2 previously concerning Schering Corporation and Warrick 3 Pharmaceuticals relative to their corporate 4 organization and -- the -- any board members and 5 officers. Do you recall that? 6 A. Yes. 7 Q. Can you identify all of the officers who held 8 the position of either president or vice-president or 9 other officers in -- in Warrick Pharmaceuticals 10 Corporation for any year? 11 A. No, I cannot. 12 (Exhibit 89 marked) 13 Q. (BY MR. McNEELY) The document that has been 14 marked Exhibit 89, would you review that briefly and 15 identify it, if you can? 16 A. (Witness reviewing document). It appears to 17 be a list of all of the subsidiaries and officers of 18 Schering Corporation. 19 Q. Have you ever seen that document before? 20 A. No. 21 Q. Well, if we could start on the first page of 22 Exhibit 89 with the Bates number 0012427 and at the 23 top do you see it's entitled "Corporate Data Sheet 24 Schering Corporation"? 25 A. Yes.</p>	<p style="text-align: right;">Page 882</p> <p>1 data sheet there's a date of June 24, 1998 and for 2 Warrick Pharmaceutical Corporation there's May 29, 3 1998. And it's my understanding that these corporate 4 data sheets were produced by Warrick in connection 5 with your deposition. 6 A. Okay. I just want to reiterate that I was 7 not employed as an employee after 1993 or 1994. This 8 is a 1998 document. 9 Q. Yes. I understand that. 10 Now, referring to the Warrick corporate 11 data sheet. You have that before you? 12 A. Yes, I see it. Warrick -- Warrick 13 Pharmaceuticals Corporation? 14 Q. Yes, sir. If you would, take a look at the 15 list of directors and officers. 16 A. Yes. 17 Q. Is that your understanding of the directors 18 and officers of the Warrick Pharmaceutical Corporation 19 for the period of 1998, if you know? 20 A. I don't know. That's what's listed here, but 21 again, I did not interact with people in this 22 capacity, as officers of the board. 23 Q. Warrick Pharmaceuticals was created in 1993; 24 is that correct? 25 A. I don't know the exact year that it was</p>
<p style="text-align: right;">Page 881</p> <p>1 Q. And prior to reviewing this corporate data 2 sheet were you aware that Raul Cesan was both a 3 director, president and chairman of the board of 4 Schering Corporation? 5 A. No, I did not. 6 Q. You knew Raul Cesan as the president of 7 Schering Corporation though; is that correct? 8 A. I knew Raul -- I can't recall his exact 9 title, he had several titles, and I only reported to 10 him a very short period of time. So I don't know 11 exactly what titles he had. Here is a title where it 12 says "Director." I don't know that he was a director 13 of Schering Corporation. I just did not -- I 14 associated with him in terms of Schering Laboratories. 15 Q. Did you ever associate with him as 16 Schering-Plough Corporation? 17 A. No. He may have had some title then, but I 18 didn't associate with him with respect to that title. 19 Q. Okay. Now, with regard to -- it's Bates 20 number 12430 and the corporate data sheet for Warrick 21 Pharmaceuticals Corporation. 22 A. Incidentally, if I might ask, what year is 23 this? 1998 is it? 24 Q. Yes. Well, it's entitled -- it's dated -- 25 there's different dates. On the Schering Corporation</p>	<p style="text-align: right;">Page 883</p> <p>1 created. I know that I came to work for Warrick in 2 1993. 3 Q. And I believe your testimony was that you 4 left Warrick in 2004; is that correct? 5 A. As a consultant, yes. 6 Q. As a consultant. From 1993 through 2004 when 7 you left as a consultant, was there any time in which 8 you met with the board of directors of Warrick 9 Pharmaceuticals? 10 A. No. 11 Q. Is there any time for that -- for that same 12 time period that -- can you even name any of the 13 directors for Warrick Pharmaceuticals? 14 A. No, I cannot. Not -- I don't know who the 15 directors were. I may have interacted with them in 16 some other capacity, but not as a member of the board. 17 (Exhibit 90 marked) 18 A. (Witness reviewing document). 19 Q. (BY MR. McNEELY) Mr. Weintraub, you've been 20 handed a two-page exhibit that has been marked as 21 Exhibit 90? 22 A. Yes. 23 Q. And have you ever seen this document before? 24 A. No, I have not. 25 Q. And would you just -- well, I can -- on the</p>

19 (Pages 880 to 883)

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1 very first page at the top it's -- it reads "State of
 2 Delaware 1993 Annual Franchise Tax Report"; is that
 3 correct?
 4 A. That is correct.
 5 Q. And this is a -- the annual tax report for
 6 Warrick Pharmaceutical Corporation. Do you see that?
 7 A. Yes.
 8 Q. And the date of incorporation is March 15,
 9 1993?
 10 A. That is correct.
 11 Q. On the second page it lists the nature of the
 12 business being the sale of pharmaceutical products; is
 13 that correct?
 14 A. That is correct.
 15 Q. And also the principal place of business
 16 outside of Delaware is 7500 North Natchez Avenue,
 17 Niles, Illinois; is that correct?
 18 A. That is correct.
 19 Q. And as I understand, the Niles, Illinois
 20 address, as well as ultimately the Reno, Nevada
 21 address, was never the corporate headquarters for the
 22 officers or any of the actual administration of the
 23 corporation known as Warrick Pharmaceutical; is that
 24 correct?
 25 A. To the best of my knowledge.

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1 Q. And, again, it also lists directors; is
 2 that -- is that correct?
 3 A. Yes.
 4 Q. Raul Cesan, Donald Conklin and John Nine; is
 5 that correct?
 6 A. That is correct.
 7 Q. What did John Nine do relative to Warrick
 8 Pharmaceuticals, to your knowledge?
 9 A. He was a senior vice-president in charge of
 10 manufacturing operations.
 11 Q. And he was an employee of Schering-Plough?
 12 A. How he -- how he was designated with the
 13 corporation, I don't know, but he was a Schering
 14 employee.
 15 Q. And who was Donald Conklin?
 16 A. Donald Conklin was a senior vice-president, I
 17 can't recall the exact title, at the corporate office.
 18 Q. And what corporate office?
 19 A. He was in Schering-Plough headquarters.
 20 Q. And also the officers, at least for this
 21 initial tax report, is -- shows a president, Eugene P.
 22 Desimone. Do you see that?
 23 A. Correct.
 24 Q. And who is Eugene P. Desimone?
 25 A. I knew Eugene Desimone as the vice-president

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1 for finance assigned to Schering.
 2 Q. And the assistant treasurer, Donald J.
 3 Soriero or Soriero?
 4 A. Soriero. Soriero.
 5 Q. Thank you. And -- and who is he?
 6 A. I know how to pronounce the name and I don't
 7 know who he is.
 8 Q. Okay. Now, as I understand your previous
 9 testimony, you never interacted with any of these list
 10 of directors or officers in their capacity as working
 11 with Warrick; is that correct?
 12 A. I never interacted with them in their
 13 capacity as directors or officers of Warrick. I
 14 interacted with them with their normal capacity as I
 15 knew it. Like on occasion with Mr. Desimone as the
 16 vice-president for finance, with Mr. Cesan as the
 17 president of the overall organization for Schering
 18 Laboratories, and so on.
 19 (Exhibit 91 marked)
 20 A. (Witness reviewing document).
 21 Q. (BY MR. McNEELY) Mr. Weintraub, you've been
 22 handed the -- this next document that has been marked
 23 as Exhibit 91. Can you identify that document?
 24 A. It's an annual franchise tax report from the
 25 State of Delaware for the year 2004.

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1 Q. Now, 2004 was your last year with Warrick
 2 Pharmaceuticals as a consultant; is that correct?
 3 A. That is correct.
 4 Q. And this -- do you see that this annual
 5 report shows the principal place of business outside
 6 of Delaware as Reno, Nevada; is that correct?
 7 A. That is correct.
 8 Q. And, again, in fact, the -- there was no
 9 administrative offices or officers or the main work of
 10 Warrick Pharmaceuticals done in Reno, Nevada; is that
 11 correct?
 12 A. That was a shipping facility.
 13 Q. Okay. And is it also correct that neither
 14 you or any of the officers of Warrick Pharmaceuticals
 15 ever stepped foot in those shipping facilities in
 16 Reno, Nevada, to the best of your knowledge?
 17 A. I can't speak for the other officers of
 18 Warrick, as you've delineated the officers in the
 19 previous documents. I can only speak for myself in
 20 that case, and, no, I was never there in Reno. I was
 21 on the phone with them fairly often. We talked a
 22 great number of times about correspondence that had
 23 come in there and they didn't want to take the time to
 24 send it back up to New Jersey, so they would call me
 25 and I would talk to them about shipping matters, and

20 (Pages 884 to 887)

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1 so on.
 2 Q. Okay. The -- the form has changed somewhat
 3 from the original annual report, but you see in the
 4 bottom block for "Officer/Director" they have listed
 5 Steve C. Chellevold?
 6 A. Chellevold. Chellevold.
 7 Q. And who is he?
 8 A. He has since passed away, unfortunately. He
 9 was part of the manufacturing and -- contract
 10 manufacturing and the regular manufacturing operation
 11 of Schering.
 12 Q. And how did you -- what business did you have
 13 with Mr. Chellevold relative to the business of
 14 Warrick Pharmaceuticals?
 15 A. I don't recall any contact with him in 2004.
 16 Prior to that I talked to him about a number of
 17 matters with respect to third-party manufacturer, to
 18 manufacturing, and so on. I don't recall the exact
 19 years. He was not in this country all that time. At
 20 some point he was in South Africa, came back. Was
 21 assigned to a South Africa branch and came back, but
 22 over the years. I knew him from manufacturing
 23 production planning and third-party manufacture.
 24 Q. They have his address listed as Reno, Nevada.
 25 Was he, in fact, placed or working for Warrick in

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1 Reno, Nevada?
 2 A. I don't know. In the year 2004 I wouldn't
 3 know.
 4 Q. At any time prior to that would you know?
 5 A. I cannot recall that. I don't know how he
 6 was headquartered.
 7 Q. The officer -- only one officer is listed and
 8 that is Arthur --
 9 A. Ceconi.
 10 Q. -- Ceconi. Who is he?
 11 A. I don't know.
 12 Q. Mr. Weintraub, I would like for you to, if we
 13 could, have Exhibit 7. If you take a -- review
 14 Exhibit 7. I believe the document, sir --
 15 A. Should be on the bottom here, I would think.
 16 Sorry.
 17 Q. Do you have that before you, Mr. Weintraub?
 18 A. Yes, I do.
 19 Q. Do you recall this is a chart that was
 20 introduced while Mr. Moore was taking or asking direct
 21 questions?
 22 A. Yes.
 23 Q. Okay. Did you have anything at all to do
 24 with the preparation of this exhibit and that chart?
 25 A. I did not.

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1 Q. Okay. Can you explain why the year 1997
 2 is -- is missing from this chart?
 3 A. I didn't prepare it, so I don't know.
 4 Q. Okay. Did you extract any information from
 5 the attached Redbook sections?
 6 A. Did I extract any information? I didn't
 7 prepare the chart and I believe that the Redbook, if I
 8 remember correctly, formed the basis for the cover
 9 sheet.
 10 Q. Okay. Did you verify any of the information
 11 on the chart compared to the Redbook material?
 12 A. When we went through this the other day, yes,
 13 it appeared to be correct.
 14 Q. Okay. And with regard to the -- actually,
 15 the Redbook material for the years, at least, 1996 to
 16 2002, with the exception of 1997, are those the
 17 Redbooks that you were familiar with and working as a
 18 consultant for Warrick?
 19 A. Yes. I didn't work with these too often.
 20 These look like they are the annual report. At least
 21 they appear to be. I worked with the one that came
 22 out every month. Now, these may be the -- well, since
 23 they're extracted from the books, I currently can't
 24 tell. Yeah. This says "annual" on the page. And I
 25 didn't work with the annuals very often. I worked

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1 primarily with the books that came out, as I say,
 2 every month.
 3 Q. Okay. Well, with regard to these -- the
 4 annual books that were used to compile, or at least
 5 extract information to support this Exhibit 7 chart,
 6 those were -- that was -- the Redbooks were something
 7 that you had available to you in the Warrick offices?
 8 A. Yes. They were mailed in to us every month
 9 from Redbook.
 10 Q. And you would also receive the annual reports
 11 as well?
 12 A. Yes.
 13 Q. And you're generally familiar with -- with
 14 the contents and how those books are set up?
 15 A. Yes, generally.
 16 Q. Okay. The Redbooks are something that --
 17 that Warrick employees or Warrick salespeople, and
 18 also yourself, would rely on for -- for a variety of
 19 information; is that correct?
 20 A. The salespeople out in the field didn't use
 21 it too often. It was primarily an office book. I
 22 don't know if the salespeople ever got a copy of it.
 23 (Exhibit 92 marked)
 24 Q. (BY MR. McNEELY) Mr. Weintraub, you have
 25 been handed an Exhibit 92, which I will represent to

21 (Pages 888 to 891)

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<p style="text-align: right;">Page 892</p> <p>1 you as the cover page and one page out of that annual 2 book for the years 1998, 1999 and 2000. Do you see 3 that? 4 A. Yes, I do. 5 Q. Okay. Now, these are -- you would have had 6 access to these Redbooks in your offices in -- for 7 Warrick; is that correct? 8 A. Yes, we had access to them. 9 Q. Okay. And I would ask that you look at the 10 second page or the one page behind the cover page for 11 those three years. 12 A. Yes. 13 Q. Can you identify that, starting with the 1998 14 year? 15 A. It's a Medicaid reimbursement for drugs by 16 state. 17 Q. And this is a -- a regular section in the -- 18 at least in the annual books for Redbook; is that not 19 correct? 20 A. That is correct. 21 Q. And this is something you were familiar with; 22 is that correct? 23 A. By "familiar with," I think I told you I 24 hardly ever looked at the annual book. I used the 25 monthly books.</p>	<p style="text-align: right;">Page 894</p> <p>1 Redbook was actually a vehicle or a tool that you and 2 Warrick used to publish the AWP prices; is that not 3 correct? 4 A. That is correct. 5 Q. And if I would -- if you would, please, could 6 you refer to Exhibit 92, the Redbook exhibits. And if 7 you would, just turn back to the 1998 Redbook Medicaid 8 reimbursement formulas or reimbursement rates and 9 related information from 1997. 10 A. I have 1998. What do you want, 1997? 11 Q. Well, it actually -- under the -- the header 12 or the title "Medicaid Reimbursement For Drugs by 13 State" the following sentence is as follows, if you 14 would just follow with me. 15 A. Okay. 16 Q. It begins with "This table shows." Do you 17 see that? 18 A. Yes. 19 Q. "This table shows Medicaid prescription drug 20 reimbursements rates and related information for 1997. 21 The information was provided courtesy of the National 22 Pharmaceutical Council, Reston," Virginia; is that 23 correct? 24 A. That's correct. 25 Q. Are you familiar with the National</p>
<p style="text-align: right;">Page 893</p> <p>1 Q. I understand that. 2 A. I'm familiar with it. I don't even recall 3 going into this particular page. 4 Q. Okay. And if you would, look at that -- at 5 least for the 1998 Redbook the page for Medicaid 6 reimbursements. That has the formula for 7 reimbursement either with using WAC or AWP for all of 8 the states; is that not correct? 9 A. That appears to be correct. 10 Q. And that would also be true for the annual 11 report 1999, the drug reimbursement rates and related 12 information for 1999; is that not correct? 13 A. That's correct. 14 Q. And the same would be true relative to the 15 2000 Drug Topics Redbook regarding Medicaid 16 reimbursements? 17 A. That is correct. 18 Q. So for -- strike that. 19 For the entire period that you were with 20 Warrick, you had similar annual books available to you 21 in your offices at Union; is that correct? 22 A. That is correct. We had -- they were 23 available to us. 24 Q. And with regard to Redbook and the other 25 pricing compendia for the pharmaceutical industry,</p>	<p style="text-align: right;">Page 895</p> <p>1 Pharmaceutical Council? 2 A. I'm familiar with the name. I don't deal 3 with the organization. 4 Q. Are they not, in fact, a -- an organization 5 that is sponsored by the major pharmaceutical 6 companies, including Schering-Plough? 7 A. I don't know. I'm really not -- I said I'm 8 familiar with the name, not with the organization. 9 Q. Did any officer or Schering office concerning 10 Medicaid or Medicare reimbursement ever provide 11 information from the National Pharmaceutical Council 12 documents or reports to you? 13 A. I don't recall receiving any. 14 (Exhibit 93 marked) 15 Q. (BY MR. McNEELY) Mr. Weintraub, you've been 16 handed an exhibit that is marked Weintraub 93. And 17 would you please review that and perhaps maybe see if 18 that refreshes any memory regarding the organization 19 of National Pharmaceutical Council? 20 A. (Witness reviewing document). 21 Q. And particularly I will refer you to the 22 second page of that document where it reflects the 23 members of the counsel. 24 A. Yes. 25 Q. Do you see where Schering-Plough Corporation,</p>

22 (Pages 892 to 895)

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1 2000 Galloping Hill Road, Kenilworth, New Jersey is
 2 listed as a member?
 3 A. Yes, I do.
 4 Q. Do you recall seeing any of the publication
 5 or reports that are provided by the National
 6 Pharmaceutical Council --
 7 A. I don't recall receiving them. I may have,
 8 but I don't recall any. You are talking about my term
 9 with Warrick, are you not?
 10 Q. Well, you have been noticed and cross --
 11 this -- this particular deposition has been cross
 12 noticed in the MDL cases and as well as a variety of
 13 states relative to the people I represent. I would
 14 like to also, if there's any information from your
 15 days as a -- on the brand side, on the Schering-Plough
 16 as a Schering-Plough employee or Schering Corporation
 17 employee, I would like your testimony on that as well.
 18 A. I may remember having some interaction with
 19 National Pharmaceutical Council when I was with
 20 Schering back in the '70s or '80s.
 21 Q. And what kind of interaction are you talking
 22 about?
 23 A. I believe that the president of NPC came to
 24 Schering, talked to us, and I can't remember the
 25 subject matter, but I remember meeting the president

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1 at one time or another.
 2 Q. And at that time Schering-Plough was -- was a
 3 sponsor or member of the council at that time?
 4 A. I don't know.
 5 (Exhibit 94 marked)
 6 Q. (BY MR. McNEELY) You have been handed an
 7 exhibit, which really -- it's one exhibit. There are
 8 two sections, which I will represent that they are
 9 extracts from a larger document entitled
 10 "Pharmaceutical Benefits Under State Medical
 11 Assistance Programs 2000 Published by the National
 12 Pharmaceutical Council, Inc." Do you see that?
 13 A. Yes. Yes.
 14 Q. During your tenure with Schering Corporation
 15 or Warrick, having this document in front of you, does
 16 it refresh any of your recollection concerning having
 17 reviewed the type of information that is represented
 18 in this Exhibit 94?
 19 A. I don't recall ever reviewing this
 20 information.
 21 Q. Would you agree that as a member of -- that
 22 Schering-Plough being a member or sponsor of the
 23 National Pharmaceutical Council and as well as your
 24 time at Schering Corporation, as -- also as with
 25 Warrick as a unit of the Schering family,

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1 Schering-Plough family, that this information was
 2 available to Warrick during the -- from '93 to 2004?
 3 MR. MOORE: Object to form.
 4 A. To the extent that it was lodged at Schering
 5 it was available to us, if it was there. I don't -- I
 6 can't attest to that.
 7 (Exhibit 95 marked)
 8 Q. (BY MR. McNEELY) Mr. Weintraub, you've been
 9 handed Exhibit Number 95, and if you would, please,
 10 review that document and tell me if you can identify
 11 it.
 12 A. Yes. It's a document from me to -- from --
 13 to me from Dan Valerio and the subject is Redbook's
 14 omissions letter received in August of 2000.
 15 Q. And I believe this is a -- apparently a
 16 computer-generated document and -- actually, the
 17 letter that is mentioned as an attachment is on the
 18 very last page. Do you see that? It's a letter from
 19 Daniel Valerio to Linda Panke at the Redbook update?
 20 A. Yes.
 21 Q. And it's dated August 14, 2000?
 22 A. Yes.
 23 Q. And I would refer you to the middle paragraph
 24 or it begins with "The enclosed list of products." Do
 25 you see that?

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1 A. Yes.
 2 Q. And for the record, I'm going to read that.
 3 "The enclosed list of products are currently not
 4 listed and we would appreciate it if you would arrange
 5 to include them in future issues of Redbook UPDATE.
 6 This is very important to us because many of our
 7 generic competitors are listed and we have been
 8 getting questions as to why these Warrick products are
 9 not included. It is costing us business."
 10 Did I read that correctly?
 11 A. Yes.
 12 Q. And as you were copied with this letter, did
 13 you have any input into the drafting of this letter?
 14 A. No. Was this letter attached to the document
 15 or were they all together?
 16 Q. That's my understanding. That's how they
 17 were produced.
 18 A. Okay.
 19 Q. And the subject of the cover page is the
 20 Redbook omissions letter. Do you have any reason to
 21 believe that that letter is not part of this e-mail?
 22 MR. MOORE: Object to form.
 23 A. That was an e-mail or was it a letter?
 24 Q. (BY MR. McNEELY) It looks like --
 25 A. An e-mail?

23 (Pages 896 to 899)

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1 Q. It looks like an e-mail to me.
 2 A. Okay.
 3 MR. MOORE: I object to the form of the
 4 question. He can answer, I just object to it.
 5 THE WITNESS: Okay.
 6 Q. (BY MR. McNEELY) Do you -- did you -- do you
 7 recall this letter to begin with?
 8 A. I don't recall it specifically.
 9 Q. Okay. Can you explain to me what -- the
 10 language that the omissions of the Warrick products
 11 was "costing us business"?
 12 MR. MOORE: Objection as to form with
 13 respect to this particular document.
 14 A. For those -- I would expect that for those
 15 products that were not listed and for those
 16 organizations that utilized Redbook as the means of
 17 getting reimbursed for products, since it wasn't
 18 listed, it wasn't reimbursable or it made great
 19 difficulties for them.
 20 If I might append that, also.
 21 Q. (BY MR. McNEELY) Yes, sir.
 22 A. What's listed, also, are the -- are the
 23 ratings for the product. And if a product wasn't
 24 rated equivalent to another product, then the drug
 25 store would not use it or the -- or the dispensing

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1 pharmacy would not use it. They had to make sure that
 2 it was substitutable. So the rating was with that,
 3 also.
 4 Q. Thank you. Now, I'm going to shift a little
 5 bit in the time frame and I would like to ask some
 6 questions regarding the genesis or the creation of
 7 Warrick as -- as an entity -- entity within the
 8 Schering-Plough organization. And with regard to
 9 developing any generic strategies for the creation of
 10 Warrick, were you involved in any of the early
 11 meetings regarding generic strategies?
 12 A. I was involved in some meetings.
 13 Q. And in any of those meetings or during that
 14 time period before Schering created Warrick, were you
 15 provided with various reports, strategy papers
 16 regarding the creation of a generic strategy and the
 17 creation of Warrick?
 18 A. I may have been provided with them. I would
 19 have to see them, see whether I was copied on them or
 20 not.
 21 Q. Yes, sir.
 22 (Exhibit 96 marked)
 23 Q. (BY MR. McNEELY) Would you briefly review,
 24 or take as long as you need, what -- the exhibit that
 25 has been marked as Exhibit 96. Tell me if you can

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1 identify that document.
 2 A. The document is a Schering Laboratories
 3 generic strategy.
 4 Q. And is that a strategy paper that you have
 5 seen before?
 6 A. I don't recall seeing it. When was it
 7 issued, do you know?
 8 Q. I don't know. Do you -- do you recognize the
 9 document and can you place it in a time frame?
 10 A. No. That's why I'm asking. I don't know. I
 11 don't recall it.
 12 Q. Do you recall seeing this document before?
 13 A. I don't recall it.
 14 MR. McNEELY: Can we go off the record
 15 just -- just briefly? I need to --
 16 MR. MOORE: Certainly.
 17 THE VIDEOGRAPHER: Stand by.
 18 MR. McNEELY: -- find a document.
 19 MR. MOORE: Certainly.
 20 THE VIDEOGRAPHER: The time is 11:02
 21 a.m. We are off the record. This concludes Tape 14.
 22 (Recess from 11:02 to 11:15)
 23 THE VIDEOGRAPHER: Stand by. The time
 24 is 11:15 a.m. We are back on the record. This is the
 25 beginning of Tape 15.

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1 Q. (BY MR. McNEELY) Mr. Weintraub, before we
 2 took a -- just a short break so I could find what was
 3 sitting on the floor right beside me, we were talking
 4 about the Exhibit 96, which is the Schering
 5 Laboratories generic strategy.
 6 A. Right.
 7 Q. There is apparently no date on this
 8 particular document, but it was produced by Warrick in
 9 the course of the discovery and there was several
 10 references that would perhaps date it, but I would
 11 like to cover some of the content with you.
 12 A. If I could help you. I noticed before I left
 13 that there was one chart from -- it says 1992 to 1996,
 14 so it has to be subsequent to that. Figure 3, on Page
 15 3, says 1992 to 1996. So it came after 1996, I guess.
 16 Q. Well, would you take -- what page was that?
 17 A. I just happened to look at Page 3. As a
 18 matter of interest, while I was looking, I thought
 19 Page 54 was interesting. It says, "Since we do not
 20 have personnel with this experience in Schering at the
 21 moment, we will have to recruit from the outside." So
 22 I guess I didn't come from the outside.
 23 Q. Okay. Well, I believe Page 3 may be
 24 projections or anticipated impacts from --
 25 A. Oh, that's right.

24 (Pages 900 to 903)

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<p style="text-align: right;">Page 904</p> <p>1 Q. -- losing patent protection. 2 A. Yeah, that's right. But -- 3 MR. MOORE: Mr. Warrick -- I mean, 4 Mr. Weintraub, thank you for your assistance here. 5 Let Mr. McNeely ask -- 6 THE WITNESS: Sure. 7 MR. MOORE: -- you questions and you 8 answer. 9 THE WITNESS: Okay. 10 Q. (BY MR. McNEELY) Let's go through this -- 11 this Schering Laboratories generic strategy and see if 12 you have any understandings or comments relative to 13 its content. And I would refer you to it. It is 14 Bates number - and I'm going to be using the far 15 bottom right set of Bates numbers - ending with 5995. 16 It's about the third page in the -- in the exhibit. 17 5995. And are you on that -- that page, 18 Mr. Weintraub? 19 A. Yes. 20 Q. And do you see there's a heading that says 21 "Recommendation"? 22 A. Yes. 23 Q. I'm going to read into the record that 24 paragraph and then the three bullet points, if you'll 25 follow me. "To successfully protect against the</p>	<p style="text-align: right;">Page 906</p> <p>1 generic competition we are able to recoup the monies 2 lost as a result of that. 3 Q. (BY MR. McNEELY) I would next refer you 4 to -- it's -- again, this is, I believe, an executive 5 summary and it doesn't have the pages, but the Bates 6 number ends with 5996. 7 A. Yes. 8 Q. And there is a paragraph heading, it says, 9 "Protect and extend the life cycle of our branded 10 products." Do you see that? 11 A. Yes. 12 Q. And in the middle of that paragraph there is 13 a sentence that begins, "By introducing lower-priced 14 private label (generic)." Do you see that? 15 A. Yes. 16 Q. I'm going to read into the record and if you 17 would follow with me, please. "By introducing 18 lower-priced private label (generic) versions of our 19 own branded products, such as Proventil Inhaler, we 20 will successfully be able to extend their life cycle 21 and profit stream beyond the point with which we are 22 normally familiar." 23 A. Correct. 24 Q. I read that correctly? 25 A. Yes.</p>
<p style="text-align: right;">Page 905</p> <p>1 inevitable sales and share erosion of our branded 2 products and to leverage up our branded products in 3 the Managed Care environment, it is recommended that 4 Schering Laboratories establish a position in the 5 generic marketplace. The strategy necessary to 6 achieve entry focuses on the following objectives: 7 "Protect and extend the life cycle of 8 our branded products as patents expire. 9 "Seek to create" -- "create leverage for 10 our Managed Care business with value added generics. 11 "Provide Schering with an effective 12 defensive position to protect our multi-source 13 portfolio from generic and therapeutic substitution." 14 Did I read that correctly, 15 Mr. Weintraub? 16 A. Yes, you did. 17 Q. Is that not, in fact, the -- the strategy and 18 the goals or objectives of that -- of Schering 19 relative to the creation of Warrick? 20 MR. MOORE: Objection to form. No 21 foundation with respect to this document. 22 A. That's what's expressed here. I only know 23 that as far as I was concerned my strategy was as 24 mandated by Mr. Cesan, get up and running so that when 25 the Proventil inhaler comes into place where it says</p>	<p style="text-align: right;">Page 907</p> <p>1 Q. And is that not, in fact, the -- the goal of 2 Warrick as you expressed it a moment ago? 3 MR. MOORE: Same objection. 4 A. Yes. We will recoup the dollars lost that 5 otherwise would have gone entirely to generic 6 competition. We would have accumulated some of those 7 dollars for our own product. 8 Q. (BY MR. McNEELY) And in that same paragraph 9 two sentences from -- from where I've left off, do you 10 see the language "By having our own private label"? 11 A. Yes. 12 Q. I'm going to read that sentence for the 13 record, if you would follow with me. "By having our 14 own private label versions we will also be able to 15 maintain, if not increase, prices on the branded 16 versions." Did I read that correctly? 17 A. Yes, you did. 18 Q. And is that not, in fact, a goal, in fact, 19 that occurred with the creation by Schering of 20 Warrick? 21 MR. MOORE: Same objections. 22 A. That was not a goal, to my understanding. 23 All I know is that the brand prices, regardless of 24 whether there is generic competition or not, tend to 25 rise. I don't know who wrote this or where they got</p>

25 (Pages 904 to 907)

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1 the information from, but the fact that Warrick
2 existed had nothing to do with any increases or
3 decreases on the price of the brand. We were not
4 involved in that in any way.

5 Q. (BY MR. McNEELY) Also I would like to -- the
6 last sentence on that page, which ends in 5996,
7 continuing to the next page, I would like to also read
8 into the record that language. Would you follow along
9 with me?

10 A. Yes.

11 Q. "In addition, we could further enhance the
12 profits of branded products in the near term by using
13 the Warrick entity as a vehicle to minimize certain
14 rebates. Specifically under current Medicaid
15 legislation, by establishing separate NDC codes for
16 the same product, i.e., one for Schering and one for
17 Warrick, we believe they would be treated as distinct
18 products for filing purposes. Thus, we could move
19 deep discounted business for products with minimal
20 full price spillover into Warrick and not be forced to
21 provide large 'best price' rebates in the retail
22 Medicaid market."

23 Did I read that correctly?

24 A. Yes, you did.

25 Q. Is that not, in fact, what has occurred in

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1 the past with the creation of Warrick by the Schering
2 company?

3 MR. MOORE: Same objections.

4 A. I don't know how best price affected the
5 Proventil brand. I did not do any of those
6 calculations. I was not involved with them.

7 Q. (BY MR. McNEELY) Mr. Warrick -- I mean,
8 excuse me. That probably is correct. But,
9 Mr. Weintraub, I apologize. I'll try to get it right.

10 A. Don't apologize.

11 MR. MOORE: I did it first, so ...

12 A. The Warrick name is a pretty -- a name with a
13 lot of integrity, so I'll take it.

14 Q. (BY MR. McNEELY) There was -- there's
15 already been some testimony concerning the integration
16 of Warrick into Schering managed care; is that
17 correct?

18 A. That is correct.

19 Q. And in connection with -- and you had some --
20 some connection and -- and -- and work with the shared
21 managed care relative to that integration of the
22 Warrick products into their sales; is that not
23 correct?

24 A. That really never came to pass in terms of
25 full integration. Warrick products were sold by

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1 managed care. We never got involved in the process to
2 any degree, any great degree. I certainly never did.
3 Our contact with managed care was essentially that of
4 having to follow up on state issues, such as are we
5 listed on the formulary, and so on.

6 So the integration -- as a matter of
7 fact, years later we were still trying to get
8 so-called integrated, but we never really did.

9 (Exhibit 97 marked)

10 Q. (BY MR. McNEELY) Mr. Weintraub, you've been
11 handed a document which has been marked as Exhibit 97.
12 If you would, just take a moment to review it and
13 then, if you can, identify it for the record.

14 A. (Witness reviewing document). It's a
15 document that I wrote to Mr. Zahn in August of 1993 on
16 the status of where Warrick was at the time in terms
17 of being established and functioning.

18 Q. Now, there's a -- on the first page, the
19 third bullet point, there is a paragraph which states
20 as follows: "Clarification of independence of Warrick
21 activity/pricing vis-a-vis PROVENTIL brand was
22 obtained. This is still a matter of concern to Brand
23 Management and to Trade Sales."

24 What clarification of independence was
25 needed relative to your comments on Bullet Point

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1 Number 3?

2 A. I think I testified to the fact that I was
3 regarded as the enemy at one point by the -- not by my
4 management, but by the brand people. The brand people
5 were very much concerned that I was going to
6 cannibalize their product. And, indeed, I did and I
7 wanted to be absolutely sure that Mr. Zahn understood
8 that I was going to price my product to get the
9 business without regard to the brand. And that was
10 the clarification. And he had to tell his brand
11 people, who did not report to me, that that was going
12 to be the case.

13 Q. The -- that -- your stated objective of
14 competing against the brand, was that -- wasn't that
15 outside your instructions relative to the object and
16 purpose of the creation of Warrick in the first place?

17 A. No. The object and purpose, I think I've
18 stated, was to recoup the dollars lost as a result of
19 the product getting generic competition, that is, the
20 Proventil brand. In order to do that I had to be
21 competitive in the marketplace to get business for the
22 Warrick product. The brand business was going to
23 disappear. I don't think the brand people understood
24 that. They regarded me as the competition and not
25 necessarily the other competition the competition.

26 (Pages 908 to 911)

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1 Q. I would like to refer you to the second page
2 of Exhibit 97, and refer you under "Comments" to which
3 is numbered 5. Do you see that?

4 A. Yes.

5 Q. And I'm going to read it for the record as
6 follows: "A Managed Care strategy and implementation
7 plan should be developed as soon as possible. This
8 should include a bidding strategy for state
9 institutions."

10 Did I read that correctly?

11 A. Yes, you did.

12 Q. And in this document you were advocating the
13 managed care strategy; is that correct?

14 A. I was advocating a managed care strategy.

15 Q. And a managed care strategy would have
16 necessarily involved working with the brand side of
17 the Schering Corporation; is that correct?

18 A. It would have -- it would have -- I consider
19 that a managed care strategy to sell Warrick product
20 because I certainly couldn't do it on my own in the
21 managed care arena.

22 Q. Did Warrick Pharmaceuticals, during the time
23 that you were a consultant, use bundling and nominal
24 pricing to sell packages to customers, physician
25 groups or any of your classes of trades?

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1 A. I was not involved in any nominal pricing. I
2 think you've shown me documents where that may have
3 occurred, I think, but I was not involved in any.

4 Bundling, would you define "bundling"
5 for me?

6 Q. Is "bundling" not a term of marketing that
7 you're familiar with?

8 A. It has different meanings to different
9 people. "Bundling" means that you can -- that you
10 must buy one product to get another, so you bundle
11 them together. We never had that situation, the terms
12 that you must buy in order to get another product.

13 (Exhibit 98 marked)

14 Q. (BY MR. McNEELY) And you've been handed a
15 document that has been marked Exhibit 98 and -- but
16 I'm going to ask you if you will keep the -- the other
17 exhibit in front of you --

18 A. Sure.

19 Q. -- because I'll be asking questions on that a
20 little bit further.

21 Can you identify what Exhibit 98 is?

22 A. It's an offer of products contractual to the
23 Fallon Clinic in Worcester, Massachusetts.

24 Q. And, also, there is a -- a separate -- it's
25 not part of that letter contract, I will represent to

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1 you, the very last page of this exhibit. Can you
2 identify that?

3 A. That is a page from Patty Burke to Kathy
4 Flynn and it has to do with changing a price.

5 Q. Okay. Now, was going back to the -- to the
6 letter dated February 2nd, 1995, which is part of
7 Exhibit 98.

8 MR. McNEELY: And for the benefit of the
9 record it's Bates labeled WAR0043141. And that
10 exhibit -- that letter part of this exhibit goes
11 through WAR0043148. And the e-mail from Miss Flynn is
12 a one-page e-mail chain from -- and its Bates range is
13 WAR0043124.

14 Q. (BY MR. McNEELY) Now, getting back to the
15 letter, and it's on Warrick letterhead; is that
16 correct?

17 A. Yes, it is.

18 Q. And are you familiar with the Fallon Clinic
19 Pharmacy in Worcester, Massachusetts?

20 A. I'm familiar with it.

21 Q. You recognize them as a customer of Warrick
22 Pharmaceuticals?

23 A. I recognize them as a customer of Warrick
24 Pharmaceuticals. We did not, to my memory, sell them
25 directly. We did not as Warrick contract with them.

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1 I believe this was done by managed care.

2 Q. Okay. And on the second -- at least on the
3 second page of this exhibit there is a list of three
4 Warrick products and their NDCs. Do you see that?

5 A. Yes, I do.

6 Q. And those are all albuterol products?

7 A. Yes, they are.

8 Q. And -- and under the "Price," do you see
9 that?

10 A. Yes.

11 Q. Would 30 cents on these three products be
12 considered nominal pricing?

13 A. I believe that it would. I would have to
14 take a look at the price in effect at that time.

15 Q. Have you yourself ever set up a contract or
16 agreement using nominal pricing?

17 A. Absolutely not.

18 Q. Have you ever participated in any Warrick or
19 Schering group to develop any nominal pricing
20 strategies?

21 A. Not me.

22 Q. And relative to the -- to the last page of
23 the e-mail from Ms. Flynn, can you -- from reading
24 that e-mail, that chain, where they apparently have
25 dropped the price in the contract down to eight cents

27 (Pages 912 to 915)

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<p style="text-align: right;">Page 916</p> <p>1 for those products, can you -- do you have any 2 understanding of what they were doing? 3 MR. MOORE: Object -- 4 A. I do not. 5 MR. MOORE: Excuse me. Excuse me. 6 Objection, form. No foundation. Go ahead. 7 A. I do not. I have never seen the document. 8 I'm not copied on the document. I really can't 9 comment on the intent of the document. 10 (Exhibit 99 marked) 11 Q. (BY MR. McNEELY) Okay. You should have been 12 handed just one document. There may have been two. 13 Do you have just one document before you dated October 14 15th, 1992? 15 A. Yes, I do. 16 Q. And that's been marked as Exhibit 99? 17 A. Yes. 18 Q. And if you would, please, could you review 19 that and identify that document? 20 A. It's a document entitled "Nominal Pricing 21 Meeting," an executive summary of that meeting. 22 Q. Okay. Are you familiar with this document? 23 Have you seen it before? 24 A. I don't recall seeing it. 25 Q. Who is Carolyn -- is it Kocis?</p>	<p style="text-align: right;">Page 918</p> <p>1 the Nominal Pricing Strategy to be added to 2 Mr. Cesan's staff meeting agenda. This meeting will 3 be held on Thursday, October 22. Mr. Cesan has 4 requested that the executive summary be sent to him in 5 France early next week so that he can prepare for the 6 meeting." 7 Did I read that correctly? 8 A. You did. 9 Q. Having read that, does that refresh your 10 memory concerning this meeting? 11 A. Not the meeting. You have to recognize, when 12 I made arrangements for discussion of the nominal 13 pricing strategy to be added to Mr. Cesan's staff 14 meeting, it was not in the context of nominal pricing 15 procedure. I ran Mr. Cesan's staff meetings and 16 settled the agenda for him. So this was -- when they 17 said -- they said I have made arrangements, it was in 18 my duties with respect to running Mr. Cesan's staff 19 meeting. 20 Q. Thank you. Let's -- now I'm referring -- 21 A. And that's how it got added and that's why my 22 name is in that spot. I did that for several months 23 before I retired. 24 Q. And let's go to the second page, which has a 25 Bates range SP 000940.</p>
<p style="text-align: right;">Page 917</p> <p>1 A. Kocis. 2 Q. Kocis. 3 A. Carolyn Kocis. 4 Q. Kocis. 5 A. My mispronunciation. I'm sorry. 6 Q. Who is she? 7 A. She is a person who works in the managed care 8 arena. 9 Q. Is she also -- the managed care arena. Is 10 she also associated with ITG? 11 A. ITG was established after I left Schering, I 12 believe. The integrated therapeutics group. I'm not 13 really familiar with that group. 14 Q. Okay. And the distribution list for this 15 report I believe is on the second page, but I'm not -- 16 I'm not certain of that, what the distribution list 17 is. Do you see a distribution list on here? No 18 matter. 19 Let's go -- let's start on the first 20 page. Do you remember attending a nominal pricing 21 meeting on October the 15th? 22 A. I don't remember doing it, no. 23 Q. Okay. Let's look at the second paragraph on 24 the first page. And I'm going to read for the record. 25 "Mr. Weintraub has made arrangements for discussion of</p>	<p style="text-align: right;">Page 919</p> <p>1 A. Yes. 2 Q. Okay. I'm going to read -- well, there's a 3 title, "Executive Summary Nominal Pricing Strategy." 4 Do you see that? 5 A. Yes. 6 Q. And I'll read the first paragraph for the 7 record. "A meeting was held on Thursday, October 15 8 to discuss the implementation of the nominal pricing 9 strategy. Present were W. Anderson, R. Baldini, R. 10 Bucko, E. Desimone, F. Foil, C. Kocis, P. Morgan, F. 11 Musat, R. Russo, P. Verstraete, E. Watson, H. 12 Weintraub and D. White. 13 "The meeting first focused on risks 14 associated with implementation of the strategy. After 15 assessing the risks, the focus of the meeting moved to 16 how to implement the strategy if approved." 17 Did I read that correctly? That's -- 18 A. You did. 19 Q. -- that's two paragraphs. 20 A. You did. 21 Q. Who was W. Anderson? 22 A. Wayne Anderson, if memory serves me 23 correctly, at that time was the vice-president in 24 charge of the oncology unit, I believe. 25 Q. And R. Baldini?</p>

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<p style="text-align: right;">Page 920</p> <p>1 A. He was president of Key Pharmaceuticals. 2 Q. R. Bucko? 3 A. R. Bucko was vice-president of finance. 4 Q. And E. Desimone? 5 A. Was senior vice-president of finance. 6 Q. F. Foil? 7 A. F. Foil was vice-president for the Key field 8 force. 9 Q. And C. Kocis we've identified already; is 10 that correct? 11 A. That's correct. 12 Q. Who is H. Weintraub? 13 A. That was me. 14 Q. And D. White? 15 A. Dennis White was my managed care -- I can't 16 recall if he was director or vice-president at that 17 time. 18 Q. Okay. So having -- having read the 19 attendance list, does it refresh your memory that you 20 did, in fact, attend the nominal pricing strategy 21 meeting on October 15th? 22 A. It says I was there. I don't recall it. I 23 really don't recall it. 24 Q. Next -- regarding the next paragraph, the 25 "Implementation Strategy." Do you see that?</p>	<p style="text-align: right;">Page 922</p> <p>1 A. Correct. 2 Q. "Providing Mr. Cesan approves the strategy 3 and feels that corporate approval is needed, Harvey 4 Weintraub will coordinate required approvals." 5 A. Correct. 6 Q. Does that help you remember or refresh your 7 memory relative to participating in the nominal 8 pricing strategy? 9 A. I don't remember participating in the 10 strategy or that meeting. I do remember putting it on 11 Mr. Cesan's sales staff -- or sales meeting. I can't 12 remember if I had the participants, the managed care 13 finance and marketing people all in there at that 14 time. I would believe that the notes from his staff 15 meeting would reflect that. I don't know. I don't 16 know that I ever coordinated required approvals for 17 that. I tend very much to doubt it. If it was 18 approved. I don't even know if it was approved. 19 Q. Well, apparently some type of strategy 20 relative to nominal pricing was -- was put in place 21 with both Schering and Warrick; is that not correct? 22 MR. MOORE: Objection, form. 23 A. I do not know of any nominal pricing strategy 24 for Warrick. I was not involved in it. 25 Q. (BY MR. McNEELY) I would -- turn your</p>
<p style="text-align: right;">Page 921</p> <p>1 A. Yes. 2 Q. It's still on the same page. 3 A. Yes. Oh, yes, yes. Yes. 4 Q. I'm sorry. And what are the three drugs that 5 appear to be addressed for this nominal pricing 6 strategy? 7 A. Proventil inhaler, Vanceril and Proventil 8 Repetabs. 9 Q. And on the next page I believe they have one 10 more. 11 A. K-Dur. 12 Q. And I would like to now refer you back to the 13 final page, which is SP 000949. And do you see the 14 headings "Implementation," "Next Steps," and "Follow 15 Ups"? 16 A. Correct. 17 Q. And under "Next Steps" there are three bullet 18 points. Do you see that? 19 A. Yes. 20 Q. The last two of those three bullet points 21 read as follows: "Harvey Weintraub to arrange a 22 meeting with principals from Managed Care, Finance, 23 and Marketing and Mr. Cesan in order to gain his 24 approval of strategy. Timing: ASAP following 25 Executive Summary approval."</p>	<p style="text-align: right;">Page 923</p> <p>1 attention to -- it's SP 000944. I guess that's about 2 the fifth page of that exhibit. 3 A. I have it. 4 Q. And I would refer you to the upper -- well, 5 that part of the paragraph that's on the top of that 6 page. Let me -- now, tell you what. Let me start on 7 the previous page. Under the heading of "Current 8 Competitive/Legislative Environment." And -- but it's 9 at the very bottom of the page. It starts, "As an 10 alternative strategy." Do you see that? 11 A. Yes, I do. 12 Q. I'm going to read that paragraph into the 13 record. If you would follow with me. "As an 14 alternative strategy, Glaxo they may choose to hold 15 prices and lose a portion of their contract business 16 in order to receive positive political press. They 17 may then work with the state to reinstate the state's 18 right to implement a formulary. They could try to 19 gain exclusive formulary status by illustrating how 20 much cheaper to Medicaid their product is than ours 21 due to their much higher rebates. This would" be 22 effective -- "This would effectively shut us out of 23 Medicaid with the" product "we compete on. Frank 24 Musat indicated that" he "had tried this tactic in 25 Illinois on the Proventil Solution generics and the</p>

29 (Pages 920 to 923)

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<p style="text-align: right;">Page 924</p> <p>1 State was not interested in the regalement." 2 Did I read that correctly? 3 A. Yes, you did. 4 Q. At that time what generics -- and this would 5 be October the 15th, 1992, what generics would Frank 6 Musat have to try the tactic in Illinois? 7 MR. MOORE: Objection to form of -- 8 Q. (BY MR. McNEELY) If you know. 9 MR. MOORE: Objection to form as it 10 relates to this document. 11 A. I don't know what he had. The only 12 possible -- he says "Proventil Solution generics," so 13 there may have been a generic -- there may have been a 14 Warrick generic at that time. I don't know. 15 Q. (BY MR. McNEELY) Well, you worked with Frank 16 Musat at that time; is that correct? 17 A. By "worked with him," I worked with him in 18 '93. I had worked with him over the years in various 19 functions. But with respect to the generics, he was 20 working with the third-party operation with -- with 21 respect to the generics and I was not involved in 22 that. I was out gathering information. I think I've 23 indicated I did not establish the Proventil -- the 24 Warrick albuterol generics. They were there when I 25 got there.</p>	<p style="text-align: right;">Page 926</p> <p>1 on -- was on relative to nominal pricing? 2 A. I had no position on nominal pricing. I 3 wasn't involved in it. 4 Q. I understand your answer, but is it not 5 correct that on many contracts with managed care 6 Warrick products were bundled with Schering products 7 and nominal pricing was provided? 8 MR. MOORE: Objection, form. 9 A. I did not see those contracts, so I can't 10 comment with any kind of assurance on whether there 11 were many of them, any of them, or whatever they were. 12 I did not have access to those contracts. I was not 13 involved in negotiating them, I did not see them once 14 they got negotiated. 15 Q. (BY MR. McNEELY) Now, in reference to 16 Exhibit 98, that is a Warrick contract, is it not? 17 And it's in reference to the Fallon physician group. 18 A. It's on Warrick stationery. How the contract 19 was written, yes, I guess it probably is a Warrick 20 contract. 21 Q. And that includes nominal pricing; is that 22 correct? 23 MR. MOORE: Objection, form. 24 A. I would have to -- it would appear to be, but 25 I would have to take a look at the pricing at that</p>
<p style="text-align: right;">Page 925</p> <p>1 Q. Okay. Let me refer you to that same page, 2 third bullet point under "Risks Associated With 3 Strategy." Do you see that? 4 A. Yes, I do. 5 Q. I'm going to read into the record. Would you 6 please follow me. "Negative government attention: 7 Schering Plough could be singled out for trying to 8 avoid Medicaid rebates. This could entail negative 9 press or being subpoenaed by Congress to give 10 testimony on our actions. It was also noted that the 11 rate of our list price increase could further focus 12 government attention on us. The group present at the 13 meeting did not feel that they could make a decision 14 on this risk factor. It was felt that Corporate 15 management must be" -- "must be the final determinant 16 on whether this is an acceptable risk." 17 Did I read that correctly? 18 A. Yes, you did. 19 Q. Having read that, do you remember meeting 20 with this group on October the 15 to discuss the risk 21 factors involved with the strategy they were proposing 22 on nominal pricing? 23 A. No, I do not. 24 Q. Are you -- strike that. 25 What -- do you recall what your position</p>	<p style="text-align: right;">Page 927</p> <p>1 time to see if it was nominal pricing. I don't -- I 2 think I've testified I can't recall individual prices 3 on a given day for a given product. So I would have 4 to take a look at the price and then take a look at 5 this particular price and see if it met the definition 6 of nominal pricing. 7 Q. (BY MR. McNEELY) And what -- for the -- for 8 the benefit of the Court and jury, what is the 9 criteria for nominal -- being characterized or 10 classified as nominal pricing? 11 MR. MOORE: Objection, form. 12 A. My understanding is that nominal pricing is a 13 price 10 percent below your actual price. 14 Q. (BY MR. McNEELY) Did anyone -- 15 A. 10 percent or below. 16 Q. Okay. Thank you. Did anyone from Warrick as 17 part of a protocol between Schering, managed care, and 18 Warrick products pricing, was any person required to 19 be consulted with using Warrick products and nominal 20 pricing on those products in Schering managed care 21 contracts? 22 MR. MOORE: Objection, form. 23 A. As I understand your question, was Warrick 24 involved in nominal pricing for contracts? 25 Q. (BY MR. McNEELY) Was it -- was it a</p>

30 (Pages 924 to 927)

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<p style="text-align: right;">Page 928</p> <p>1 requirement or was it a -- in order for Warrick 2 products to be used in nominal pricing or bundled 3 managed care contracts, did anybody at Warrick have to 4 be consulted? 5 MR. MOORE: Objection, form. 6 A. Not that I'm aware. I certainly wasn't or 7 anybody at my level or below was not consulted, to my 8 knowledge. 9 MR. MOORE: On the phone, we're having 10 some -- having a little noise factor on the phone 11 here, if someone could hit their mute. 12 MR. McNEELY: Is anybody on the phone? 13 MR. MOORE: Do we have anybody on the 14 phone? 15 MS. WILLIS: Yes. 16 MR. RODA: Joe Roda here. 17 MR. MOORE: Okay. 18 MR. RODA: We're still here. 19 MR. MOORE: Okay. Okay. It's stopped. 20 MR. ANDERSON: James Carroll and Jarrett 21 Anderson are here. 22 MR. MOORE: Okay. It sounded like 23 somebody was choking Jarrett or something. I'm not 24 sure. 25 Q. (BY MR. McNEELY) Back to the exhibit</p>	<p style="text-align: right;">Page 930</p> <p>1 A. No. I did not get involved in that. 2 Q. (BY MR. McNEELY) And with regard to the 3 second bullet point, and I'll read that into the 4 record as well. "Congress concluded their session 5 without making any additional changes to the Medicaid 6 rebate legislation. There was no move to a flat rate 7 rebate, and no retroactive pricing. It currently 8 appears that congress is comfortable with the Best 9 Price legislation. However, this does not mean they 10 cannot change the legislation at some future date. 11 With the Presidential election pending, it is likely 12 that any future action would be at least 9 to 12 13 months in the future. This leaves an opening for us 14 to achieve savings in 1993. It was also noted that 15 1993 is a very challenging year for Schering and these 16 savings would be very welcome." 17 Having -- did I read that correctly, 18 Mr. Weintraub? 19 A. Yes. 20 Q. Can you tell me why 1993 was a very 21 challenging year for Schering and they were looking 22 to -- to come up with strategies to avoid rebate 23 payments? 24 MR. MOORE: Objection, form. No 25 foundation as to this document.</p>
<p style="text-align: right;">Page 929</p> <p>1 relative to nominal pricing meeting. 2 A. Yes. 3 Q. I'll refer you to the page SP 000943. And 4 under -- again, under "Current Competitive/Legislative 5 Environment." 6 A. Yes. 7 Q. The first two bullet points under that 8 heading. I'm going to read the first one and -- for 9 the record. "Legislation was recently passed which 10 requires pharmaceutical companies to sell to Public 11 Health Services and disproportionate share hospital at 12 a price which equals that paid by Medicaid. This same 13 legislation exempts the Federal Supply Schedule and 14 other federal purchasers from best price 15 consideration. It also increased the minimum Medicaid 16 rebate from 15 percent to 15.7 percent. The estimated 17 impact to Schering is \$15 million." 18 Did I read that correctly? 19 A. You did. 20 Q. And do you recall those changes in 21 legislations and the estimated impact of Schering as 22 represented in that paragraph? 23 A. No. 24 MR. MOORE: Objection, form as to this 25 document.</p>	<p style="text-align: right;">Page 931</p> <p>1 A. I cannot recall when 1993 would be any more 2 challenging than any other year. I can't recall that. 3 Q. (BY MR. McNEELY) Would you agree that the 4 content -- 5 A. I was out of the sales operation at that 6 time, so I didn't have direct involvement in the sales 7 issues. 8 Q. Okay. I'm sorry for interrupting you. Thank 9 you for your comments. 10 Now, with regard to this meeting in 1992 11 and what is being suggested or proposed in this -- 12 this meeting as a -- the nominal pricing strategy and 13 the risks that are described, would you not agree that 14 this -- this would present potential large problems 15 for Schering and Warrick if they participate in this 16 type of strategy? 17 MR. MOORE: Objection to form. No 18 foundation. 19 A. I don't know. I really don't know. I have 20 never given nominal pricing any thought. I -- until 21 this came up here at the moment. I haven't seen this 22 document. I don't know that I attended this meeting, 23 any or all of it -- or any part of it. I don't know 24 since there's no distribution list as to whether the 25 attendees' listing here has been -- meant for</p>

31 (Pages 928 to 931)

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1 distribution as well as attendees. I just don't know
2 that.
3 Q. (BY MR. McNEELY) Would you not agree,
4 Mr. Weintraub, that the strategy that is proposed in
5 this memorandum and this meeting is basically a
6 formula for conspiracy to commit fraud in the Medicaid
7 arena?

8 MR. MOORE: Objection to the form of
9 that question. It's calling -- asking the witness for
10 a legal conclusion. There's no foundation as to this
11 document. Objection, form.

12 A. Prior to counsel's interjection there, I was
13 going to say I have no knowledge as to whether this
14 would be legal or not legal.

15 Q. (BY MR. McNEELY) And if I -- if you've
16 testified towards this, forgive me for being
17 repetitive, but do you recall what the outcome of the
18 meeting with Mr. Cesan was relative to approving and
19 implementing the nominal pricing strategy?

20 A. I do not know.

21 MR. MOORE: Objection, form.
22 (Exhibit 100 marked)

23 Q. (BY MR. McNEELY) Mr. Weintraub, you've been
24 handed a three-page document that has been marked as
25 Exhibit 100. We've reached the century mark. It's

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1 dated January 4th, 1993. I'm going to ask you to
2 review that and tell me if you can identify it,
3 please.

4 A. It's a memorandum from Gene Desimone and Rich
5 Zahn to Raul Cesan on strategic issues. And the
6 issues are with respect to generic strategy and
7 managed care trends and legislative issues.

8 Q. Do you recall ever receiving this particular
9 document concerning the generic strategy?

10 A. I do not.

11 Q. On the third page or last page of this
12 exhibit there is, in fact, a four-paragraph
13 description of what is entitled "Generic Strategy."
14 Do you see that?

15 A. Yes, I do. Yes, I do.

16 Q. And there is a -- there are three short lists
17 of what that strategy is. Do you see that?

18 MR. MOORE: Objection, form.

19 A. I think it's a list of how a generic strategy
20 can achieve the following. It didn't say that it is
21 the strategy.

22 Q. (BY MR. McNEELY) Well, let's -- let's take
23 that -- that first list and above it the paragraph
24 says, "A thorough analysis and strategic position will
25 be developed to determine how a generic strategy can

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1 achieve the following."

2 A. "Can achieve."

3 Q. "Can achieve." And there's five factors.

4 "1. extend life cycles

5 "2. protect prices

6 "3. minimize rebates

7 "4. support managed care

8 competitiveness

9 "5. better position Schering for the
10 next decade"

11 Did I read that properly?

12 A. Yes, you did.

13 Q. Now, is that not, in fact, your understanding
14 of what the strategy behind the formation of Warrick
15 was at the time you got involved with Warrick
16 Pharmaceuticals?

17 MR. MOORE: Objection -- excuse me,
18 Mr. Weintraub.

19 Object to the form of the question. No
20 foundation as to this document, asked and answered,
21 repetitive.

22 A. Mr. Cesan never outlined a generic strategy
23 for me. He just told me to get the operation up and
24 running for the day that Proventil inhaler obtained
25 generic competition. That's the way I looked at it

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1 and that's what I did.

2 Q. (BY MR. McNEELY) I understand that.

3 A. I don't know that -- I did not see these
4 strategies or did I operate with respect to these
5 necessarily.

6 (Exhibit 101 marked)

7 Q. (BY MR. McNEELY) Mr. Weintraub, you've been
8 handed a document that has been marked as Exhibit 101.
9 And it begins with Bates range WAR0001434 and ending
10 Bates ranges WAR0001441. If you would, please review
11 that and identify it for the record.

12 A. It's a document from Mark Calabrese, Carolyn
13 Kocis and Kevin Cavanagh to Managed Care Directors --
14 Directors and MCAMs on Proventil inhaler/albuterol
15 generic managed care action plan.

16 Q. And do you recall receiving a copy of this
17 document?

18 A. No. I am not on the copy list.

19 Q. Ray Kapur appears to be a recipient of this
20 or at least there is a transmittal note; is that
21 correct?

22 A. That's correct.

23 MR. MOORE: Could someone on the phone
24 mute their -- hit their mute, please? We are getting
25 feedback on this end.

32 (Pages 932 to 935)

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<p style="text-align: right;">Page 936</p> <p>1 Q. (BY MR. McNEELY) And if you would, please --</p> <p>2 well, this -- do you recognize the authors of this --</p> <p>3 or at least what appears to be the authors of this</p> <p>4 particular memo?</p> <p>5 A. Mark Calabrese and Carolyn Kocis worked in</p> <p>6 the managed care arena. Kevin Cavanagh was a finance</p> <p>7 individual who may or may not have been assigned to</p> <p>8 managed care. I don't know. This was a 1996 memo.</p> <p>9 That was after I had left Schering Labs.</p> <p>10 Q. Now, but this -- this memo does purport to</p> <p>11 address albuterol generic with regard -- with regard</p> <p>12 to the managed care plan; is that right?</p> <p>13 MR. MOORE: I object to the form.</p> <p>14 There's no foundation with respect to this document.</p> <p>15 A. That's what it says. Proventil inhaler and</p> <p>16 generic albuterol inhaler, an action plan.</p> <p>17 Q. (BY MR. McNEELY) Okay. And I would refer</p> <p>18 you to the second page of the document, WAR0001435.</p> <p>19 A. Yes.</p> <p>20 Q. And do you -- under the heading "Executive</p> <p>21 Summary," do you see the paragraphs under there?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And the first paragraph I'm going to read for</p> <p>24 the record. "Our objective in Managed Care is to</p> <p>25 minimize the generic erosion of PROVENTIL Inhaler's</p>	<p style="text-align: right;">Page 938</p> <p>1 second page. So I did come across this document</p> <p>2 having looked at it, the second page.</p> <p>3 Q. (BY MR. McNEELY) Thank you for that. And</p> <p>4 also on the third page, is that also your writing?</p> <p>5 A. Yes, that is.</p> <p>6 Q. And with regard to that third page, your</p> <p>7 handwritten comment, the first one, can you read that</p> <p>8 for us?</p> <p>9 A. Which one?</p> <p>10 Q. It's the third page. It's the top comment.</p> <p>11 A. "No longer true."</p> <p>12 Q. And what is that in reference to, if you</p> <p>13 can -- if you can tell me today?</p> <p>14 MR. MOORE: Objection, form. No</p> <p>15 foundation.</p> <p>16 A. "The cost of the generic" --</p> <p>17 MR. McNEELY: You don't think he can</p> <p>18 read his own writing?</p> <p>19 MR. MOORE: I think just relating it to</p> <p>20 this document that he said he doesn't recall is the</p> <p>21 objection that I have. I think he can read his own</p> <p>22 writing and I'm happy for him to ask (sic) the</p> <p>23 question, Hugh. I just want to preserve an objection</p> <p>24 to it because he said he didn't recall the document.</p> <p>25 That's all I'm doing.</p>
<p style="text-align: right;">Page 937</p> <p>1 retail market share while not facilitating the brand's</p> <p>2 price destruction. This plan will concentrate only on</p> <p>3 our accounts with retail business (PBMs, IPAs and</p> <p>4 Mixed Models HMOs)."</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes, you did.</p> <p>7 Q. And the second paragraph reads as follows:</p> <p>8 "Although we will not follow the generics downward in</p> <p>9 price, we have the latitude to increase the rebate on</p> <p>10 PROVENTIL inhaler in the instances where our customers</p> <p>11 agree not to apply a M.A.C." - MAC - "nor put in place</p> <p>12 'hard' edits that compromise PROVENTIL's retail</p> <p>13 reimbursability. Additionally" we'll -- "we will</p> <p>14 utilize, where applicable, the leverage that</p> <p>15 nominal" -- "nominal PROVENTIL Inhaler affords us."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes, you did.</p> <p>18 Q. Now, were you not, in fact, aware of what</p> <p>19 managed care was doing relative to keeping the price</p> <p>20 of Proventil high relative to these type of programs?</p> <p>21 MR. MOORE: Objection, form. No</p> <p>22 foundation.</p> <p>23 A. I do not. I must say looking at this second</p> <p>24 page where I said I did not recall this document, it</p> <p>25 appears to me that my writing is on the -- on this</p>	<p style="text-align: right;">Page 939</p> <p>1 Q. (BY MR. McNEELY) Can you go ahead and -- can</p> <p>2 you relate that to this document?</p> <p>3 MR. MOORE: Same objections.</p> <p>4 A. It would appear to me after all these years</p> <p>5 that I said it is no longer true, that generics do not</p> <p>6 offer immediate savings to most plans. I think</p> <p>7 generics would offer immediate savings.</p> <p>8 "The cost of the generic to the plan may</p> <p>9 initially be higher than the brand." I don't know</p> <p>10 what context that's made, but certainly the first part</p> <p>11 of it, generics don't offer immediate savings, I would</p> <p>12 think today looking at that after all these years that</p> <p>13 my comment "no longer true" would hold.</p> <p>14 Q. (BY MR. McNEELY) I would refer you to the</p> <p>15 next page, which is -- the last four Bates numbers are</p> <p>16 1437.</p> <p>17 Okay. Let me -- before we go to the</p> <p>18 next page, can you go ahead and read the -- the other</p> <p>19 handwritten comments on Page 1436?</p> <p>20 A. Certainly. 1430 -- okay. I have difficulty</p> <p>21 reading my own writing on the second comment. In</p> <p>22 1996, was this, I probably could have read it, but I</p> <p>23 can't read it today. I can't -- I cannot make it out.</p> <p>24 Q. Either one? The last comment as well?</p> <p>25 A. It looks like it says I will -- "will inhaler</p>

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<p style="text-align: right;">Page 940</p> <p>1 be CFC free." That's all I can read at this point. 2 Q. Okay. Let's go to the next page, which is 3 1437. And you see under "Plan Evaluation"? 4 A. Yes. 5 Q. And under "Plan Evaluation" there's an 6 introductory comment and bullet points; is that 7 correct? 8 A. Yes. 9 Q. And the introductory sentence is, "You should 10 conduct an evaluation of the plan's overall benefit 11 design. This" benefit -- or, excuse me, "This 12 evaluation should include," colon. And I'm going to 13 drop down to the one, two, three, four, fifth bullet 14 point and -- which reads as follows: "information on 15 pharmacy reimbursement (both brand and generic), 16 dispensing fees, and co-pay differentials." 17 Did I read that correctly? 18 A. Yes. 19 Q. And does not that type of information and 20 evaluation and factors for this type of action plan 21 typically include information on pharmacy 22 reimbursement? 23 MR. MOORE: Objection, form. No 24 foundation with respect to this document. 25 A. I can't -- I can't comment about this</p>	<p style="text-align: right;">Page 942</p> <p>1 MR. MOORE: Objection, form. 2 A. When I was there, generics did not exist. I 3 only looked at brands. That was all -- that was all 4 that was available to me at that time. 5 Q. (BY MR. McNEELY) And with regard to brands, 6 would you evaluate pharmacy reimbursements for setting 7 up your plans? 8 MR. MOORE: Objection, form. 9 A. We would set up -- we would look at them on 10 the basis of are we reimbursed or not when I was 11 there. That was the extent. We were not very 12 sophisticated at the outset. 13 Q. (BY MR. McNEELY) With regard to the time 14 frame in which this -- this memo was sent or this 15 evaluation was being done, would someone from Warrick 16 assist in providing information on pharmacy 17 reimbursement dispensing fees and co-pay differentials 18 relative to the generic drugs? 19 A. No. 20 Q. If the Schering side of the managed care had 21 that information, to your knowledge, would they share 22 it with Warrick? 23 MR. MOORE: Objection, form. 24 A. If they had it, they never did. 25 Q. (BY MR. McNEELY) Your handwritten notes on</p>
<p style="text-align: right;">Page 941</p> <p>1 document or general plans. That's a pretty broad 2 statement. I -- I wouldn't know that. Mr. Kapur must 3 have sent this on to me for review, not for action, 4 and these are just my comments on it, but I don't 5 recall much else about it. 6 Q. (BY MR. McNEELY) Now, how many years were 7 you involved in setting up managed care programs? 8 A. Managed care programs? 9 Q. Yes, sir. 10 A. I had managed care until the early '90s. We 11 established the unit sometime in the '80s. I can't be 12 precise. I know that when it was first established it 13 was a one-man operation. We didn't have programs as 14 much as accessing the managed care market. 15 In terms of setting up programs, again, 16 that's broad. We set up field staff call programs, 17 the organizational format in which to call upon the 18 managed care. But in terms of programs, not very much 19 when I was there. 20 Q. In evaluating programs in managed care, isn't 21 it a fact that you would evaluate reimbursement, both 22 brand and generics, dispensing fees and co-pay 23 differentials on a regular basis? 24 MR. MOORE: Objection -- 25 A. When I --</p>	<p style="text-align: right;">Page 943</p> <p>1 that page, can you -- can you read those, please? 2 A. This is Page 37, the Bates page? 3 Q. Yes. 4 A. It's just a remark to myself. It depends on 5 the account. I just wondered where they got some of 6 the ideas from. It says, "Share retention is defined 7 as eroding PROVENTIL Inhaler share more slowly than 8 the plan as historically moved brand share to 9 generic." And I said that depends upon the account 10 because certainly the accounts I dealt with were 11 absolutely intent upon moving share from brand to 12 generic as quickly as possible. Walgreens I know had 13 a policy of trying to get an 80 percent share in the 14 first 12 months when a generic came out in competition 15 with a brand. The chain drug stores, and to this day, 16 they attempt to move the generic as fast as they can. 17 So I just happened to make that comment, it depends on 18 the account. I knew of no account that wanted to 19 slowly have the generic cannibalize the brand. 20 Q. What is considered -- what is -- from your 21 experience and also your work in -- with Warrick in 22 both brand and generics, what is the -- what is -- can 23 you describe what is meant by cannibalization of the 24 brand and what are the factors or numbers that -- that 25 demonstrate that a brand has been cannibalized?</p>

34 (Pages 940 to 943)

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1 A. To the extent that the generic takes away the
2 market share. Each unit of a generic sold in place of
3 a brand cannibalizes the brand to that extent. That's
4 a very simple explanation. If they take one unit
5 away, they've cannibalized it to the extent of one
6 unit.

7 But in actuality, generics eat away at
8 brands to a very rapid degree depending upon the
9 differential pricing of the number of competitors.
10 And today in today's market very often brand is
11 displaced by the generic 65 percent or more of the
12 time.

13 Q. Well, let me ask you this: Does -- does
14 that -- what you have just described, the
15 cannibalization, does that apply --

16 (Brief interruption)

17 MR. WINGET-HERNANDEZ: Please mute your
18 phones. Please mute your telephones.

19 MR. McNEELY: Can you read that back?

20 (Requested portion was read)

21 MR. McNEELY: Strike that.

22 Q. (BY MR. McNEELY) Your description of
23 cannibalization does not apply to the Schering/Warrick
24 albuterol, you know, either of their products, does
25 it? Because it's the same product. You have both --

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1 you just have two labels for the albuterol; isn't that
2 correct?

3 MR. MOORE: Objection, form.

4 A. No. To me this cannibalization was selling a
5 product with one label in place of a product with
6 another label. They may be made on the same lines,
7 they may be the same chemical entity. It's certainly
8 marketed separately and they are priced separately.

9 Q. (BY MR. McNEELY) Well, Schering -- isn't it
10 a fact that Schering and Warrick are the same?

11 MR. MOORE: Objection, form.

12 A. Schering was the parent company of Warrick.
13 We operated with different products and we operated
14 with different pricing.

15 Q. (BY MR. McNEELY) Well, isn't it correct,
16 isn't it your understanding and a fact that Warrick
17 was created to serve Schering's objectives of
18 protecting Proventil prices?

19 MR. MOORE: Objection, form. It's been
20 asked and answered. It's repetitive.

21 A. I don't know that that was the case. It was
22 formed, as I have been told and I repeatedly said, it
23 was formed so that I could recoup some of the dollars
24 that would be lost by Proventil inhaler when generic
25 competition came aboard.

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1 MR. MOORE: Can we take a short break?

2 A. I haven't finished. I was going to say
3 that --

4 MR. MOORE: I'm sorry.

5 A. -- never had anything to do with the pricing.
6 I had to do what I had to do to get the -- to get the
7 company functioning.

8 MR. MOORE: I would like to take a short
9 break. Are you done with that answer?

10 THE WITNESS: I suppose so.

11 MR. MOORE: All right. Let's take a
12 short break.

13 THE VIDEOGRAPHER: Stand by. The time
14 is 12:25 p.m. We are off the record. This concludes
15 Tape 15.

16 (Recess from 12:25 to 12:36)

17 THE VIDEOGRAPHER: Stand by. The time
18 is 12:36 p.m. We are back on the record. This is the
19 beginning of Tape 16.

20 MR. WINGET-HERNANDEZ: In view of the
21 fact, Mike, that I would be objecting to the
22 limitations of time regardless of whether you stopped
23 at 1:00 or at 5:00 today, I will offer for benefit of
24 my clients to begin making my statement, as we
25 discussed, as soon as Hugh stops asking questions. I

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1 think that that's probably going to be in just a few
2 minutes --

3 MR. MOORE: Okay.

4 MR. WINGET-HERNANDEZ: -- and before
5 1 o'clock.

6 MR. MOORE: Yeah. Just so everybody
7 knows, I'm not going to take the position, and I'll
8 say on the record, that because somebody stopped --
9 agreed to stop at a quarter 'til or 10 'til than 1:00
10 that I'm going to argue that that somehow is -- it has
11 any meaning at all because I think -- I think I know
12 what everybody's position is. So I'm not -- that's
13 not a trick.

14 MR. WINGET-HERNANDEZ: We don't want to
15 keep you from making your plane.

16 MR. MOORE: Yeah. Well, I appreciate
17 that. Well, others have planes and --

18 MR. WINGET-HERNANDEZ: And we are also
19 going to keep, as far as I've heard, it sounds like
20 we're going to keep our statements --

21 MR. MOORE: Good.

22 MR. WINGET-HERNANDEZ: -- short and
23 sweet as possible.

24 MR. MOORE: Great. And I will, too.

25 All right. Let's go then. Let Hugh

35 (Pages 944 to 947)

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1 keep going.
 2 Thank you. Appreciate that.
 3 (Exhibit 102 marked)
 4 Q. (BY MR. McNEELY) Mr. Weintraub, glad to have
 5 you back for a little while.
 6 A. Glad to be back.
 7 Q. You have in front of you a two-page document
 8 which has been marked as Exhibit 102. 102. You see
 9 that?
 10 A. Yes, I do.
 11 Q. And would you please review it and identify
 12 it, if you can?
 13 A. Well, I can identify it from the title and
 14 from the authors and the recipients. That's all I
 15 know about the document.
 16 Q. Okay. And it's -- at least it's entitled
 17 "PacifiCare Proposal"; is that correct?
 18 A. That is correct.
 19 Q. And Mr. Cesan, Mr. Zahn, Mr. Bucko,
 20 Mr. Desimone, I believe those -- those are all
 21 officers of Warrick Pharmaceuticals according to the
 22 documents that have been produced; is that correct?
 23 A. If they're in that listing you gave me, yes,
 24 correct.
 25 Q. Okay. And have you ever seen this document

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1 before?
 2 A. I think I've indicated I haven't.
 3 Q. And I would like to direct your attention to
 4 the -- right above the bottom box on the first page.
 5 Do you see that?
 6 A. Yes.
 7 Q. And -- well, actually, so that it makes sense
 8 to the Court, some people that are listening to this
 9 film, let me go back to the second paragraph and I'm
 10 going to read that for the record.
 11 "The account is prepared to accept an
 12 HMR proposal for Allegra which requires NDC blocks
 13 against Claritin. PacifiCare will make a final
 14 decision on the antihistamine class on Friday,
 15 December" the 12th "and are willing to entertain a
 16 nominal price strategy to allow formulary access for
 17 Claritin.
 18 "Product net sales and market share at
 19 PacifiCare are as follows." And then those are the
 20 listings, the "Net Sales" and "Market Share." Do you
 21 see that?
 22 A. Yes.
 23 Q. And then it continues. "As a result, we are
 24 requesting your approval for the following nominal
 25 strategies from which the customer may select one

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1 option."
 2 Did I read that correctly?
 3 A. You did.
 4 Q. And the first option is Proventil CFC and
 5 HFA, "Value" 10 million. Do you see that?
 6 A. Yes.
 7 Q. And then they have the "Option II." They
 8 have the list of the drugs and value. And then it
 9 continues on in paragraph form.
 10 "In addition to the above, we are
 11 requesting your approval to substitute the above
 12 products with nominal pricing for the following
 13 products (if the aforementioned options are not
 14 acceptable to the customer and as long as the total
 15 value does" -- "does not exceed \$10 million)."
 16 And then it lists "Theo-Dur/Uni-Dur,
 17 Proventil Repetabs"?
 18 A. Repetabs.
 19 Q. And "Warrick Inhaler (staff only)."
 20 A. Correct.
 21 Q. And this -- there is -- at least there are
 22 signatures appearing to approve this proposal. Do you
 23 see that?
 24 A. Yes.
 25 Q. Do you recognize those signatures as Richard

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1 Zahn and Raul Cesan?
 2 A. Yes.
 3 Q. Were you consulted on this proposal?
 4 A. Never.
 5 Q. Now, with regard to Bucko, Desimone and
 6 Mr. Zahn, who are officers of Schering -- excuse me.
 7 Well, they are of Schering Corporation, but also for
 8 the Warrick Corporation, did they ever discuss this
 9 with you, to your recollection?
 10 A. No.
 11 Q. Were you aware that -- that Warrick inhalers
 12 were part of this proposal to PacifiCare?
 13 A. I was not.
 14 Q. This is the first time you've ever seen this
 15 document?
 16 A. To my knowledge.
 17 Q. What in the records of Warrick would reflect
 18 the Warrick inhalers that were used to fulfill this
 19 particular -- or any proposal or contract that
 20 followed after this -- the approval of the proposal?
 21 A. At Warrick itself there probably would not
 22 be. It would all be in the contract administration
 23 area.
 24 (Exhibit 103 marked)
 25 Q. (BY MR. McNEELY) Mr. Weintraub, you've been

36 (Pages 948 to 951)

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1 handed a document that has been marked as Exhibit 103.
2 103.

3 A. Yes.

4 Q. And could you review that and are you -- and
5 if you can, just identify it.

6 A. It is a strategic plan issued by Steve Cooper
7 and Mark Calabrese working for Schering -- well, I
8 don't know -- Steve Cooper was with Schering. He was
9 also with Warrick at one time. I don't know for --
10 this was written at a time when he was with Warrick or
11 with Schering. I'm not quite sure.

12 Q. Now, this particular document, do you recall
13 receiving this document?

14 A. I don't recall receiving it per se. However,
15 I noticed that up in the corner I have written some
16 commentary, so -- and it's my handwriting, so I
17 probably did receive it.

18 Q. Okay. Please -- where is your handwriting?

19 A. I think up on the top I wrote an "OK," but I
20 have crossouts in here somewhere. I just came across
21 one.

22 Q. Okay. With -- the "OK," was that your
23 designation that you approve of this action plan?

24 A. No. I would have signed my initials if I
25 approved it. "OK" was -- maybe okay to my secretary

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1 to stick it in a chron file or something of that sort.
2 If I approved it, then I would have put an initial on
3 it.

4 Q. Okay. If we can quickly try to move through
5 this document. On the -- Page 1, at the bottom, the
6 last paragraph that begins -- and I'll read it for the
7 record, "Generic distributors and private labelers
8 will be utilized by Warrick to ensure success in the
9 independent segment of the market. These distributors
10 currently comprise 40% of the generic market and
11 31" -- "31% of Warrick's albuterol sales. Controlling
12 the price to these distributors will help ensure price
13 integrity, while allowing us to gain their commitment,
14 prior to any competitor."

15 Who were the private labelers that were
16 contracted with Warrick at this time?

17 A. I can't remember at this time, but the
18 private labels that were -- I believe was contracted
19 over time were Rugby, Schein, Moore, Nova Pharm. I
20 can't recall the others offhand.

21 Q. For each of the private labelers that were --
22 Warrick was labeling product for them --

23 A. Yes.

24 Q. -- was there a written contract with each of
25 the private labelers?

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1 A. I believe the third-party organization had a
2 contract with them.

3 Q. What third-party organization?

4 A. The manufacturing organization. We call it
5 third-party manufacturing. I should say for clarity
6 here it was the contract -- contract manufacturing
7 organization for Schering, but we called it third
8 party.

9 Q. Okay. So Schering was -- actually had the
10 contract or was the contractor with the third-party
11 labelers?

12 A. I believe it was.

13 Q. And did you -- do you agree with the -- with
14 the statement that, "Controlling the price to
15 these" -- "to these distributors will help ensure
16 price integrity, while allowing us to gain their
17 commitment, prior to any competitor" --

18 MR. MOORE: Objection --

19 Q. (BY MR. McNEELY) -- is that a statement that
20 you can agree to?

21 MR. MOORE: Objection, form. No
22 foundation.

23 A. I can agree that if we committed -- committed
24 to manufacturing for them, that we would gain their
25 commitment prior to any competitor. In other words, a

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1 competitor wouldn't private label for them.

2 But, very frankly, price is determined
3 by the marketplace. There's no way you can control it
4 in the generic business. I think we said that it
5 deteriorates quickly. There's no controlling of
6 prices.

7 Q. (BY MR. McNEELY) And, also, I would like to
8 refer you to Page 3. The first paragraph under
9 "Pricing and Timing." Do you see that?

10 A. Yes.

11 Q. And I'm going to read that first paragraph
12 for the record. Please follow with me. "The major
13 objectives in the development of our pricing and
14 timing strategies are to maximize our total Schering
15 Labs Albuterol Inhaler sales, maximize Proventil brand
16 sales, while ensuring that Warrick penetrates the
17 market and wherever possible, allowing Schering Labs
18 to become the accounts 'One Stop Shopping' place for
19 all their Albuterol Inhaler needs. The additional
20 programs to maximize Proventil brand sales are covered
21 in the Proventil brand marketing plan."

22 Did I read that correctly?

23 A. Yes, you did.

24 Q. And isn't it a fact that what is being
25 expressed there is that -- that Schering and Warrick

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<p style="text-align: right;">Page 956</p> <p>1 were combined in a marketing plan to maximize both 2 sales?</p> <p>3 MR. MOORE: Objection, form. No --</p> <p>4 Q. (BY MR. McNEELY) And by "both sales" I'm 5 talking about both the branded and the generic.</p> <p>6 MR. MOORE: Objection, form. No 7 foundation for this document.</p> <p>8 A. Both combined, yes. In other words, to the 9 extent that they bought Proventil and did not buy our 10 generic inhaler, we wouldn't have maximized sales. To 11 the extent they bought Proventil, which they 12 essentially had to do, if it was specified by brand, 13 and bought the inhaler, then we had maximized the 14 sales of both.</p> <p>15 Q. (BY MR. McNEELY) Okay. And, also, quickly 16 I'll refer you to Page 5 under "Distribution" heading. 17 There is a Number 1 paragraph under -- under a heading 18 "Action." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And I'm going to read that for the record.</p> <p>21 MR. ANDERSON: This is Jarrett Anderson. 22 May I interject something. Someone does not have 23 their phone on mute and we are receiving feedback that 24 sounds like children. Could whoever is doing that 25 please place their phone on mute or get off.</p>	<p style="text-align: right;">Page 958</p> <p>1 unlabeled canisters that could have been used for 2 either Warrick or Proventil orders?</p> <p>3 A. I don't know that.</p> <p>4 Q. And, finally, on paragraph -- excuse me, Page 5 6 under the "Chain, Wholesaler, and Retail Buying 6 Groups" heading there is a Paragraph 2 at the bottom 7 of Page 6. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And I'm going to read it for the record. At 10 least I'm going to read the first sentence and it 11 says, "Warrick and Schering Trade Sales Directors 12 should begin to lay the groundwork for the launch of 13 the Warrick Inhaler"; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And, in fact, that was -- that was, in fact, 16 done. Is that not true?</p> <p>17 A. Laying the groundwork for the launching of 18 the inhaler?</p> <p>19 Q. Yes.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And with that comment and the -- and 22 the express desire of everyone to -- to make airlines 23 connections, I will only introduce one more document 24 at -- or what I'm going to do is ... 25 After reading all -- or looking at</p>
<p style="text-align: right;">Page 957</p> <p>1 MR. McNEELY: Thank you.</p> <p>2 Q. (BY MR. McNEELY) Paragraph 1.</p> <p>3 A. Yes.</p> <p>4 Q. "Manufacturing will need to produce enough 5 Warrick Inhalers to meet the first four months 6 forecast."</p> <p>7 A. Yes.</p> <p>8 Q. "To accomplish this goal, manufacturing will 9 package 1 million units of Warrick inhalers and have 10 available at launch for immediate shipment to 11 customers. In addition, manufacturing should maintain 12 a supply of 4 million unlabeled canisters which can be 13 utilized as either Proventil or Warrick units as 14 needed to make certain we are never in a backorder 15 situation on Proventil or Warrick albuterol inhalers. 16 A backorder in this market would have disastrous 17 implications for either in a post-generic 18 marketplace."</p> <p>19 Did I read that correctly?</p> <p>20 A. You did.</p> <p>21 Q. And were you a part of Warrick at the time of 22 the launch of the generic inhaler?</p> <p>23 A. I was.</p> <p>24 Q. And is it a fact that there was -- 25 manufacturing maintained a supply of millions of</p>	<p style="text-align: right;">Page 959</p> <p>1 these -- these different exhibits where Schering and 2 Warrick were working together to obtain a market share 3 jointly, is it not true that you were not the enemy to 4 Schering, that you were not competing with Schering, 5 but that Schering and Warrick were one entity, and 6 that is, they were Schering?</p> <p>7 MR. MOORE: Objection, form.</p> <p>8 A. Schering was the parent company, but we were 9 competing. There was no question about that. We 10 competed on price, we competed and we cannibalized to 11 a very rapid degree our own Proventil inhaler. The 12 brand people tried to do as much as they could to 13 retain the business on the inhaler. We tried to do as 14 much as we could getting the business on the Warrick 15 albuterol. We didn't punch each other, but we 16 certainly didn't hold back. When an account wanted to 17 buy an inhaler, we sold them an inhaler that was 18 generic. That was my business. I did not consult 19 with Warrick -- with Schering on pricing. I did not 20 consult with accounts. I could care less if they were 21 a Proventil account. I would take that business.</p> <p>22 Q. (BY MR. McNEELY) Thank you. Mr. Weintraub, 23 so based on your testimony and your comments, am I to 24 understand that you're saying that -- that Warrick was 25 not Schering?</p>

38 (Pages 956 to 959)

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1 MR. MOORE: Objection, asked and
2 answered.
3 A. It was not Schering to the extent that we
4 tried to preserve the Proventil business. I will say
5 that the trade directors went out with us on occasion
6 to introduce us to accounts so that we could sell the
7 Warrick inhaler and preserve market share for both
8 products together.
9 Q. (BY MR. McNEELY) Okay. Thank you. Do you
10 recall giving your deposition -- this is -- it would
11 have been February the 12th, 2003 in the Texas matter?
12 A. I would like to see it. I cannot recall it.
13 Q. I would direct your attention particularly to
14 the comments on Page 87, beginning with Line 23,
15 concluding on the next page, Page 88 at Line 2. And
16 it's -- this particular page from that deposition has
17 a Bates number of SPW 0037714. And if you would,
18 could you just read -- I'll highlight it for you. If
19 you would, for the record, please --
20 A. Can I look at it in the context?
21 Q. Sure.
22 A. Sure. (Witness reviewing document). That
23 continues here to here (indicating)?
24 Q. Yes.
25 A. Yes.

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1 Q. Okay. Would you please read it for the
2 record?
3 A. Again, it's a little bit out of context.
4 "Warrick marketed the generic albuterol
5 inhaler pursuant to a license with Schering?" That's
6 my question I was asked.
7 I said, "I don't know that we had a
8 license with Schering. We were Schering." We didn't
9 need a license.
10 Q. No. Excuse -- the "We didn't need a license"
11 is not part of the transcript. Just --
12 A. Yes, it is. "I don't know that we had a
13 license with Schering." It said -- "Pursuant" -- the
14 question was "Pursuant to a license with Schering."
15 And I said, "I don't know that we had a license with
16 Schering. We were Schering."
17 Q. Thank you.
18 A. We required no license.
19 Q. The "We required no license" was -- was -- is
20 your comment.
21 A. Yes.
22 Q. The quote was, "We were Schering"; is that
23 correct?
24 A. That's correct. I just wanted to make sure
25 that -- that it's within context.

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1 Q. Yes. You didn't need a license because you
2 were Schering.
3 A. We didn't need a license because we were a
4 part of Schering. We didn't need an NDA. We could
5 use the Schering NDA.
6 MR. McNEELY: Thank you very much.
7 I will reserve the remainder of my
8 questioning until such time as this deposition is --
9 is reinitiated.
10 MR. MOORE: Okay. Well, let's stay --
11 we are going to stay on the record, but,
12 Mr. Weintraub, you can -- you can go.
13 And we can turn off the video and do
14 this just on the record.
15 MR. WINGET-HERNANDEZ: That's fine with
16 me.
17 THE VIDEOGRAPHER: Turn the video off?
18 MR. MOORE: Yes.
19 THE VIDEOGRAPHER: Okay. The time is
20 12:58. We are going off the video record.
21 (Discussion off the record)
22 MR. HEUCK: I'll go first for the
23 plaintiffs and I'll try to be brief.
24 On behalf of the State of Ohio I
25 attended this deposition even though discovery has

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1 been stayed in our case and I did that based on
2 representations concerning Mr. Weintraub's health.
3 After observing Mr. Weintraub this week and hearing
4 his testimony, I don't believe there was any reason to
5 notice this deposition jointly and for our case early.
6 In our case this deposition is premature. We never
7 would have noticed the head of a company as the first
8 deposition. We came here at great expense this week,
9 spent the entire week here and, nevertheless, I have
10 not had any opportunity to cross-examine this witness
11 or otherwise participate. I will, therefore, object
12 to any of the use of the deposition by Warrick in our
13 case.
14 The State of Ohio and its counsel has no
15 association or agreement with the other states
16 represented here. There's no prosecution agreement,
17 no joint prosecution agreement. No one has been
18 asking questions on my behalf. What few questions I
19 did send over to try to provide some assistance were
20 not asked. We had no control over the examination.
21 I'm not being at all critical of it, but we had no
22 means or procedure available to us to be able to have
23 sufficient time, indeed, any time, to cross-examine
24 this witness.
25 We will reserve our right to seek costs.

39 (Pages 960 to 963)

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